

No. 15221

United States
Court of Appeals
for the Ninth Circuit

JOHN FARLEY, Appellant,
vs.

UNITED STATES OF AMERICA, Appellee.

UNITED STATES OF AMERICA, Appellant,
vs.

JOHN FARLEY, Appellee.

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 329 to 654, inclusive)

Appeals from the United States District Court for the
District of Oregon

FILED

MAR - 6 1957

PAUL P. O'BRIEN, CLERK

No. 15221

United States
Court of Appeals
for the Ninth Circuit

JOHN FARLEY, Appellant,
vs.

UNITED STATES OF AMERICA, Appellee.

UNITED STATES OF AMERICA, Appellant,
vs.

JOHN FARLEY, Appellee.

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 329 to 654, inclusive)

Appeals from the United States District Court for the
District of Oregon

(Testimony of Herman H. Larson.)

Q. During the greater part of your service as a Master of ocean-going vessels, what service were you in?

A. The Oriental Service principally.

Q. Principally Oriental. Between the Pacific Coast and——

A. The Far East.

Q. ——Japan? The Far East. Are you familiar with the liberty-type vessel?

A. Yes, sir.

Q. Have you commanded liberty vessels?

A. Yes, sir.

Q. Are you familiar, Captain, with the duties of the licensed officers on American vessels?

A. Yes, sir.

Q. Particularly, the duties of a second assistant engineer?

A. I believe—I believe I know the duties of a second engineer.

Q. What duty, if any, does he have with respect to the vessel, her cargo, and the crew, outside of his immediate four hours of duty in the engine room?

A. Well, it is usually accepted that as the licensed officer his duty is at all times on board the vessel to see that the interest of the owner, the vessel itself, is [319] protected, not alone in the handling of the cargo or the vessel itself by the personnel—the crew, in other words, as well.

Q. Well, would those duties extend to members of the crew not in the engine room department?

A. When the occasion requires it it does. If you

(Testimony of Herman H. Larson.)

will permit me I would like to qualify that by saying——

Q. Yes?

A. ——that when you speak of a licensed man you have done accepted him to be of a little superior quality than you would find among the unlicensed in the effect that he has had the experience more so than the unlicensed and, therefore, he would be better qualified to look after the interests of the personnel.

Q. Now, if a second assistant engineer should see a member of the steward's department doing some negligent act or something in a negligent manner that might result in injury to that man does the second assistant have any duty?

A. I believe it is his duty to caution him, to warn him, to try to prevent him from doing anything that would incur an accident.

Q. Now, what would your opinion be in the event this negligent act were apt to result in injury to someone other than the man that is performing the negligent act?

A. It would be the very same. I believe it would be [320] his duty not alone as an officer but as a humane act to try and prevent it by cautioning the man.

Q. What, in your experience, has been the practice in that regard, Captain; that is, what have you observed as to what the second assistant engineer actually does in that situation?

A. Well, in any situation where there is apt to

(Testimony of Herman H. Larson.)

be an injury or an accident to any member of the crew whether it is an officer or an unlicensed member of the crew, merely that he is in a position to observe where an accident might occur, it is up to him to try to prevent it as a humane act, not alone as an officer.

Q. Well, I was trying to get away from what you—the matter of his duty rather than what the actual practice is. Do they do it on the ships today?

A. Well, yes, they do. I might state it this way that I have seen where the engine crew with the second assistant as well as the third assistant have been taking oil on board the ship such as lube oil, particularly, where drums are being taken on board and being handled and there is where accidents might happen unless precaution is used because these oil drums are very heavy. And, in handling these the engineer that works with the oilers and the wipers as the case may be, it is up to him to see that no accidents occur by cautioning the unlicensed personnel [321] in handling these heavy drums. And, I have seen that on many occasions.

The Court: Of course, that is during duty tours?

The Witness: That's during duty.

Mr. Krause: That's the case of where he has the men under his command.

The Witness: That's correct.

Q. (By Mr. Krause): Well, we are concerned with the case of men who are not under the Engineer's command such as members of the steward's department.

(Testimony of Herman H. Larson.)

A. Well, merely the fact that he is an officer in itself would qualify him or should qualify him as a man of more, better experience, and for that reason he would be—it would be his duty to see that the unlicensed personnel or anyone else would not subject themselves to an accident.

Q. Well, let's get your views particularly with respect to this case here. Are you familiar with the ordinary pilot ladder in use on the liberty vessels?

A. Yes, sir.

Q. This one is described particularly as one with rope sides, oblong wood pieces in which the rounds are fastened, then the ropes pass around the oblong pieces in a groove and are seized above and below that piece of sideboard.

A. Yes, sir.

Q. Is that the ordinary type of pilot ladder?

A. That's the standard pilot ladder.

Q. When it is resting against the side of the ship is there a place where a person can take hold of the sides rather than the rounds of the ladder itself?

A. Yes, sir. Between the oval wood pieces as you have described where the Manila rope is seized to there is space for hand holds.

Q. Now, assuming this liberty vessel, the Augustin Daly, was anchored in the harbor of Sasebo where they had been discharging timber and creosoted pilings until about 10:30 on the evening of April 5th; that some of the members of the crew had been on liberty and had gone down the Jacob's ladder, the same one that was involved in this acci-

(Testimony of Herman H. Larson.)

dent, at about 6:00 P.M. in the evening and gone ashore in a launch provided by the vessel; they returned somewhere between 1:40 and 2:00 A.M.—12:40 and 1:00 A.M. on the morning of the 6th of April; the water was smooth, there were two flood-lights or cluster lights trained on the ladder itself and the steps of the ladder were visible to any person climbing the ladder, and this ladder, the Jacob's ladder, was made fast to the boat deck and then ran down to somewhere near the water's edge. Now, the crew returning from shore leave used that ladder in going aboard a vessel. What can you say about whether or not that is a safe method for the crew to get aboard under [323] those circumstances?

A. Yes, I would say it is a safe method. And, it is common practice and has been for many years. In fact, as long as I have been Master I can't recall where it has not been used.

Q. Aside from being used for the crew in going aboard and leaving the vessel, in what other circumstances is the Jacob's ladder used?

A. Well, it is used when—upon entering a port particularly on the Pacific Coast or in many of the foreign ports. The port officials, immigration, customs, and the Public Health Service boards the vessel by the pilot ladder. It is done right here in Portland. When the vessel enters the port of Portland in many cases they anchor below Terminal Number Four awaiting the port officials before they can dock. They will only dock when they receive

(Testimony of Herman H. Larson.)

permission from the port officials before quarantine—in other words, pratique is granted.

Q. In connection with any work done aboard the vessel, is the pilot ladder regularly used?

A. Yes, the pilot ladder is.

Q. In what kind of work?

A. Well, if a vessel is discharging timbers, those Jap squares, as we call them, bridge timbers, in other words, why they're rafted and raft men have to get down [324] on these rafts and they go down on a pilot ladder. And, if they're discharging cargo on barges the pilot ladder is also used. In other words, the stevedores, they enter the vessel and leave the vessel by the pilot ladder.

Q. Is it necessary to work from staging over the side of these vessels at times?

A. For the ship's crew, yes.

Q. What do they do over the side on the staging?

A. They chip and they paint.

Q. How do they get from the deck of the vessel to the staging?

A. By use of a pilot ladder or Jacob's ladder. Jacob's ladder is principally used then. There is a difference between the Jacob's ladder and a pilot ladder. A Jacob's ladder has one—one line—one rope, generally a three-inch line and a rung is inserted in the lay of the rope at regular intervals, regular steps. That is a Jacob's ladder. A pilot ladder is as you have described it previously two ropes with two rungs——

(Testimony of Herman H. Larson.)

Q. The Jacob's ladder has only one round in it in the step then? A. That's correct.

Q. But do they sometimes use pilot and Jacob's ladder interchangeably for this type of ladder that we are describing here. [325]

A. Well, the Jacob's ladder I have never seen used for the crew to——

Q. To board?

A. ——to board the vessel, no.

Q. All right. That's only——

A. I have never seen that. We at all times use the pilot ladder.

Q. Captain, are there any rules aboard ship regarding standing under ladders while other men are going up the ladder?

A. Well, that is, you might say, an unwritten law that you gain by experience is not to stand under any objects above your head for fear that some accident may happen, whether it be a load of lumber or piece of machinery or human being or anything else.

Q. Well, what is the usual practice aboard ship about men that are waiting to climb a ladder while another man is going up?

A. Well, they're being cautioned constantly against that. You will find that particularly with the ship's crew when they're working aloft which oftentimes they are and men below are being cautioned to keep from under.

Q. Well, that is the instruction you give them. But, what do you observe as a general practice, do

(Testimony of Herman H. Larson.)

men stand out from under or do they stand at [326] the foot of a ladder when other men are going up?

A. Well, I would say this: men that are familiar with life and work aboard ship, very few, if any, that I can recall need to be told because their experience tells them not to do that.

Q. Now, is it a dangerous thing for a man to climb the pilot ladder with his hands encumbered particularly by having a bottle of whisky under the left arm and a bottle of whisky by the neck of the bottle in the right hand?

A. Well, it is certainly dangerous and very dangerous for a man to attempt to climb it by the ladder when he hasn't got his two hands free.

Q. By the way, Captain, have you recently climbed a pilot's ladder? A. Oh, yes. Yes.

Q. Would you tell the Court just how exhausting it is to climb eighteen or twenty feet up a pilot ladder?

A. Well, I don't know how to describe that any more than to say I am sixty-eight years old, going on sixty-nine, and I find no handicap in doing it. I have done it many, many times and can still do it.

Q. Do you see men in ordinary good health puffing and out of breath when they have climbed eighteen feet up a pilot ladder?

A. I don't think so. [327]

Q. Are you out of breath and puffing when you have climbed that far on a pilot ladder?

A. I don't find it any great exertion.

Q. Now, when the second assistant engineer has

(Testimony of Herman H. Larson.)

been on shore leave and is in the launch that I described to you here before at the foot of this pilot's ladder and a member of the steward's department is going up this ladder encumbered with two bottles of whisky as I have described, is there any duty on the second assistant engineer?

Mr. Williams: Objected to, Your Honor. First of all, he has assumed a fact which is not an issue, the second assistant engineer being under the, he said, at the foot of the ladder. All of the testimony and all of the evidence is to the contrary. And, I feel that you cannot take a hypothetical like that and ask the witness based on no facts.

The Court: Well, I agree with you on that. When one party's position is stated as much as the position has been here and any evidence to the contrary of that would be contradictory of the party's own case, I agree with you on that, to distinguish there not being any evidence, any particular state of the trial, if you understand what I mean.

Mr. Williams: Yes.

The Court: Now, it may be a quarrel of words, too. So that there would not be any understanding, Mr. Krause, I would suggest that you give the witness the benefit of the doubt of the estimate of distances from the ladder.

Mr. Williams: I have a further objection, your Honor. Counsel does not state the existence of knowledge or lack of knowledge on the part of the second assistant engineer standing down there. I feel that the witness cannot make——

(Testimony of Herman H. Larson.)

The Court: The Court has already ruled on that.

Mr. Williams: All right.

The Court: If you will supply in your question the contention of knowledge, if any, that the libellant had, I think that will clear it up.

Mr. Krause: Your Honor, I have been proceeding upon the theory that a man knows and sees what he ought to see.

The Court: Well, has this witness been advised? Of course, he has been here in the courtroom, I understand that, but I don't think your record shows it as to what the situation was.

Mr. Krause: Yes. As far as our position is concerned, it doesn't make a particle of difference whether Farley saw this or not. It is a question of whether he ought to have seen it standing four or five feet from the ladder. And, we have the cases. I will cite your Honor the cases [329] on that and it is the same rule that we have in the state courts. A person——

The Court: I quite agree with you, Mr. Krause.

Mr. Krause: Yes.

The Court: But, I think the objection is technical.

Mr. Krause: I would like——

The Court: If you want to state for the record and let the record show that this witness has been sitting here in the courtroom and has heard all this testimony that has been produced, why, then, the record will show he knows what the factual situation is.

(Testimony of Herman H. Larson.)

Q. (By Mr. Krause): Captain, in my question I said "standing at the foot of the ladder." He was standing between four and five feet from the foot of the ladder and awaiting there for his turn to go up the ladder. Now, what, if any, duties does the second assistant have with respect to warning the man going up the ladder?

Mr. Williams: Objected to, your Honor. It is the same facts. He has not—my understanding is that the Court has ruled that the witness must be given in the hypothetical the element either of notice or lack of it. I mean, whether he knows.

The Court: Or the opportunity of whether or not he should have known. I agree with counsel that a person is charged with knowing what he should have seen, what [330] an ordinarily prudent person would have seen.

Mr. Williams: Yes.

The Court: On the other hand, I am not so sure if this witness knows what the attending circumstances are concerned. As far as the record is concerned this witness doesn't know if it is daytime, nighttime, or what it is.

Mr. Krause: I thought I had stated all that a little earlier, your Honor.

The Court: If I am in error there, Mr. Krause, I—

Mr. Krause: I may be back to a former witness.

Mr. Williams: Your Honor, if I could just be heard before counsel asks the question, perhaps we can obviate this whole difficulty. It is our position

(Testimony of Herman H. Larson.)

—I thought I understood the Court's ruling on it, but maybe I am in error—that in order to enable this witness to answer a proper hypothetical he must be told whether the man in the launch has observed this man and, therefore, what his duty is or, in the alternative, what his duty is to observe him, one way or the other.

The Court: I quite agree with you. After all, for all this witness may know the second engineer may have been engaged in some duty on the launch and he wouldn't even have observed the man. I understand that. And, that is the reason why I think this hypothetical to this witness should include the factual situation as contended by either [331] of the parties. And, I think it can obviously be, as far as the record is concerned, supplied if you will just let the record show that this witness has been here in the courtroom and has heard all the testimony that's been going on here concerning this.

Mr. Krause: Well, I have no objection to putting it that way. I would be afraid of it if counsel objected to that kind of a question because we still don't know what he heard.

Mr. Williams: I am afraid——

The Court: Well, assume the facts have been testified to by——

Mr. Krause: Yes.

Q. Well, Captain, have you been in the courtroom while Mr. Farley was on the witness stand, John Farley, the Libelant? A. Yes, sir.

(Testimony of Herman H. Larson.)

Q. Were you able to hear his testimony?

A. I think I did, yes.

Q. You have in mind the facts as he gave them with respect to the launch and the lights and the pilot ladder?

A. Yes, I believe I understand the situation as it was given by Mr. Farley.

Mr. Williams: Your Honor, if I may interject here a moment, this witness was not here the day before yesterday when Mr. Farley testified [332] concerning it, unless I am mistaken.

The Court: I think he was.

The Witness: I was.

Mr. Williams: Were you here the day before yesterday?

The Witness: Yes, sir.

Mr. Williams: Oh. I am in error.

The Court: Then, he testified that he was——

Mr. Williams: I thought he had heard a portion of his testimony but not that.

Q. (By Mr. Krause): Now, based upon Mr. Farley's statement as to the condition there and, in addition to that, that is what he testified to regarding the launch and the light and the ladder and his position with respect to the ladder, and assuming also that at that time a member of the steward's department, the third cook, was going up the Jacob's ladder encumbered with the two bottles that I have described to you before, what, if anything—if any duty did Mr. Farley have?

Mr. Williams: I will object, your Honor, on the

(Testimony of Herman H. Larson.)

ground that there is no way of being able to ascertain what the witness knows about the testimony.

The Court: Of what?

Mr. Williams: How much he heard, what he heard, and what he did not hear of Mr. Farley's testimony the day before yesterday.

The Court: Well, he said he heard it all and [333] we have to accept his testimony.

Mr. Williams: Very well, your Honor. But, I wish to object to it.

The Court: You may answer the question.

The Witness: As I recall, Mr. Farley stated in his testimony that he stood approximately four or five feet from the ladder; that he came from the after part of the launch and walked between the ship's side and the launch up to the ladder when this third cook started going up the ladder. And I also recall that he said he did not observe the third cook having any packages in his hand.

Mr. Krause: Yes.

The Witness: Well, in my opinion Mr. Farley certainly should have noticed the man going up the ladder with packages in his hands and, therefore, should have cautioned him—as an officer he should have cautioned him not to attempt that, that would create a hazard not alone for the man himself but for anyone that was within a certain radius of that ladder as it later proved.

Q. (By Mr. Krause): What is the obligation—assuming that a man is standing, whether he is a licensed officer or not, that he is standing within

(Testimony of Herman H. Larson.)

four or five feet of the foot of a Jacob's ladder eighteen to twenty feet high up to the main deck while another man is going up, what is the duty of any member of the crew under those circumstances? [334]

A. First of all, speaking for myself, I certainly would not stand near the bottom of any ladder of a man going up and if he was going up I certainly would look up to observe what was happening above my head. And, if I was anywhere near where I saw a man at the bottom of a ladder where another man was on top of him I surely would caution him to step aside and get out of the radius where anything might happen.

Q. Is a position four or five feet from the base of a Jacob's—the lower end of a Jacob's ladder a safe place to stand while another man is climbing the ladder?

A. I don't think so.

Mr. Krause: You may cross-examine.

The Court: I think we will interrupt and take ten minutes.

(Recess taken.)

Mr. Krause: With the Court's permission, could we call Dr. Cohen who is here now and withdraw Captain Larson? Does counsel agree to that?

The Court: Is that agreeable?

Mr. Williams: Yes.

The Court: All right. [335]

LAWRENCE J. COHEN

produced as a witness on behalf of the Respondent, being first duly sworn by the Clerk, was examined, and testified as follows:

Direct Examination

Q. (By Mr. Krause): Will you state your name, please? A. Lawrence J. Cohen.

Q. And, your profession?

A. Physician and surgeon.

Q. You have a specialty, Doctor?

A. Yes, sir, I have.

Q. What is it? A. Orthopedic surgery.

Q. How long have you been practicing here in Portland?

Mr. Williams: We will concede the expert qualifications of the witness.

The Court: Is that satisfactory? If you wish to qualify your doctor——

Mr. Krause: Well, I would just like to ask the Doctor one or two questions about where he received his training.

The Court: You may, sir.

Q. (By Mr. Krause): How long have you been practicing your specialty in Portland?

A. Since 1949. [336]

Q. What preparations do you have for this specialty?

A. Well, I graduated from the University of Maryland Medical School in 1934 and I had initial internship at the Sinai Hospital in Baltimore and in Johns Hopkins Hospital in Baltimore until

(Testimony of Lawrence J. Cohen.)

1937. From '37 to 1940 I was at the New York Hospital for Bone and Joint Diseases in orthopedic surgery. From 1940 until 1946 I was in the United States Army in orthopedic surgery. From 1946 until 1949 I was in the U. S. Veterans Administration Hospital at Vancouver, Washington, and at Portland.

Q. Doing orthopedic work there?

A. Yes, sir.

Q. Since that time you have been practicing privately?

A. Yes, sir.

Q. Now, Doctor, are you acquainted with John Farley?

A. I am, sir.

Q. When did you examine him the first time?

A. I examined him the first time on the 23rd of February, 1954.

Q. How many times have you seen him since?

A. I saw him on one occasion after that on the 26th of April, 1955.

Q. You did not have him under treatment, I take it?

A. No, sir, I did not.

Q. What sort of examination did you make, Doctor? [337]

A. Well, I made the usual type of orthopedic examination which includes a male removing all of his clothes, examining his major joints, musculature, gait, muscle strength, question of atrophy, neurological examination which indicates nerve innervation into the extremities, and X-ray examination.

Q. You have those X-rays here, do you?

(Testimony of Lawrence J. Cohen.)

A. I do, sir.

Q. And they were taken on what date, the X-rays?

A. The X-rays were taken on March the 13th, 1954.

Q. What did your X-rays show as to any injury to any of the bones of his body?

A. Well, it revealed a fracture of the seventh, the eighth, and the twelfth dorsal vertebrae and, to a slight degree, the tenth, and a fracture—a healed fracture of the clavicle, the right clavicle.

Q. Were all of those fractures healed at the time you had your X-rays taken?

A. Yes, sir, they were.

Q. First of all, with respect to the clavicle, what was the nature of the repair?

A. The repair was excellent, the alignment was good, the function was good. It was separated from the shoulder joint so that the joint itself was not involved.

Q. Was there anything in the appearance of the [338] clavicle after the repair that would have anything to do with the use of the shoulder and arm now or would indicate any inability to use it?

A. By X-ray, no, sir.

Q. X-rays would not. Now, with respect to the vertebrae, what was the nature of the injury to the vertebrae?

A. They were compression fractures of the body of the vertebrae. The one primarily involved was

(Testimony of Lawrence J. Cohen.)

the eighth. The others were minor. The seventh was minor, the tenth was very minor, and the twelfth was almost imperceptible. But, they were healed solidly.

Q. Now, at the time you took your X-rays, that was about, well, not quite two years after the date on which this man sustained his injury?

A. That's right, sir.

Q. He was hurt on the 6th of April, 1952, and you took your X-rays on the——

A. 13th of March, 1954.

Q. ——13th of March?

A. I beg your pardon, sir. The 23rd of February.

Q. 23rd of February, 1954?

A. (Witness nods head.)

Q. Now, what is shown in your X-rays? Does it indicate how recent those fractures were?

A. No, I couldn't say. I could only say that [339] they were solidly healed. They may be any time from a year onward or seven, eight months onward to ten, fifteen, twenty years. I couldn't tell.

Q. That is, it could have been within seven or eight months or as old as fifteen years?

A. That's correct.

Q. Now, when you speak of compression fractures, does that mean that the entire vertebra has been compressed or just a portion of the vertebra?

A. It usually means that the body of the vertebra has compressed mainly in its anterior portion or the front of the vertebra.

(Testimony of Lawrence J. Cohen.)

Q. Oh. Well, on these X-rays does it appear that the entire vertebra was compressed or just the anterior portion?

A. On the eighth some of the posterior was compressed a little.

Q. Yes.

A. On the others it was mainly only the anterior. The posterior was intact.

Q. Yes. That results, then, on the X-rays in a sort of a wedge-shaped appearance of the vertebra?

A. Yes, sir.

Q. That is, it runs down more toward a point on the anterior or front portion of the vertebra?

A. That's correct, sir.

Q. Now, as far as the repair in the vertebra is concerned, Doctor, does that in itself—I mean, the shape of the vertebra now, their position and so, would that indicate any disability or cause any disability in itself?

A. Well, when you speak of disability referable to the man, yes, it would cause some disability in the shape of a man's back. But, with the location, we might—we have to speak of disability in fractures of the vertebra in locations. The most quiet portion of the spine to be injured is right there (indicating). In the mid-dorsal area you can have a fracture of a vertebra with little disability. The most serious portion of the spine to be injured with that much compression is the cervical vertebra and next comes the lower lumbar vertebra. So, at the mid-dorsal vertebra that is the quietest place

(Testimony of Lawrence J. Cohen.)

that you can have a compression without disability.

Q. When you get to the lumbar vertebra that is carrying the great weight, more weight than the dorsal?

A. And movement. Movement is a factor. The cervical moves more than any, the vertebral portion of the lumbar moves next, and the dorsal moves least and primarily only with inspiration and expiration of the lungs so that movement actually to bending and lifting is almost non-existent in the dorsal vertebra. [341]

Q. Now, as far as the appearance of the vertebra, the spinal column, and the clavicle, could a man have complete function—perfect function?

A. With the vertebra and the clavicle?

Q. As you find the bones to be now would it be possible to have perfectly good function assuming that he had no muscular, nerve trouble, or anything of that sort?

A. Oh, it's quite possible.

Q. That is, there is no malformation that in itself prevents any use of the back or the shoulder?

A. That's right, sir.

Q. Now, then, does this man have a disability resulting—well, does he have any disability now with respect to his back and shoulder?

A. Yes, I believe he has a disability both in his back and shoulder.

Q. What is that disability due to?

A. The disability, of course, is the result of soft-tissue damage, age of the patient, limitation

(Testimony of Lawrence J. Cohen.)

of motion of a shoulder joint. Now, we will speak of the shoulder first. When the outer end of the clavicle is injured you have bleeding around a section of the soft tissues, you have general splinting of the arm. You may injure an arm of course, without fractures and have limitation of abduction, internal or external rotation of a shoulder, and [342] then as the months go by there is gradual restitution of motion. In some people it's faster than others. In some people there is no ultimate limitation of motion even after such an injury. In other people there is limitation of motion. With Mr. Farley there was limitation of motion for a relatively long period of time. There still remains a little bit of limitation of motion in the shoulder.

With relation to his back, again you have the age of the man, the size of the man, the direction of the blow, and again the ability to reinstitute himself to his former position by exercises and by means of his own ability, his own body to bring him back to normal again.

Q. Now, other than the X-rays is there anything in your last examination that confirms Mr. Farley's complaints of inability to work? I mean, are there any objective symptoms other than the old fractures?

A. If I may read this physical examination, sir?

Q. Well—— A. On the last—I——

Q. You may use your notes to refresh your memory anyway.

A. I said that his abduction in the right—in

(Testimony of Lawrence J. Cohen.)

the shoulder was better than it was at the previous examination a year before; that I was able to abduct his shoulder to 180 degrees which is normal. Prior to that, my last examination, I think the abduction was somewhat less. The abduction was 170. [343]

Q. Abduction, is that just bringing the arm out straight to the side and up?

A. We call this the coronal plane straight up. And, there was 20 degrees limitation of backward flexion and that is this (demonstrating). Now, that is the worst of all positions to do after an injury around the shoulder.

Ordinarily we are able to get a thumb at a point between the wing bones or between the scapulae but Mr. Farley can't get it quite between. I estimated it about 20 degrees. Now, that motion is the one we usually use to put our hands in our pockets, to help to comb our hair, to scratch our backs, and that sort of thing. But, for movement in front it is pretty good. That was about 20 degrees.

The internal rotation is this one (demonstrating) and that was limited by 20 degrees. That is this one (demonstrating).

Now, this one (demonstrating), of course, is the most important. External rotation is the most important one, and he had that pretty—that was good.

Q. Well, now, Doctor, when you say that there was limitation in motion do you mean to say that

(Testimony of Lawrence J. Cohen.)

there was a physical stopping or block of any further motion?

A. Yes, that's what I would say.

Q. A physical obstruction to his further [344] motion or was it because of pain that he suffered or said he suffered at that point?

A. Well, it was probably the latter. But, nevertheless, I must consider that a physical *imitation*.

Q. Well, then, let me see if I can get my terms, right.

A. You mean by a—by a block due to a bony ridge or some disturbance in the joint causing a limitation of motion? No, it was not that kind of limitation.

Q. The part of the joint might be fused, might have grown together—— A. No, it was not.

Q. ——that you couldn't move it past that point?

A. It was not that sort of thing.

Q. Well, are there any physical blocks of the kind that I have spoken about now that prevent any of these motions? What I want to know is does this limitation of motion that you find result from the fact that he says it hurts when he goes farther than that?

A. No. It is a little more than that.

Q. It is a little more than he complains of pain?

A. It is a shortening of muscle structures. Now, when we have pain we have limitation of motion. If that continues along a long time we get some shortening of muscles and with rehabilitation

(Testimony of Lawrence J. Cohen.)

and with exercises those muscles are lengthened back to their normal size again and then we [345] have return of motion in a joint that is not physically blocked. With Mr. Farley there is some limitation still remaining from the shortening, I would say, of muscles rather than any physical block.

Q. Now, are there other conditions contributing to this disability that you find him suffering today, any condition other than those that might be attributable to an accident?

A. Well, I would say that one of the difficulties is his age. People who are injured when they are older don't respond as well. Of course, under that there are many things which have to be considered. When you are younger you make a tremendous effort, of course, physically and mentally to respond and to get back to normal. When you get a little older you don't have quite that same drive either physically or mentally to get back to the same condition again.

Q. Well, are there any other evidences of disease in your X-rays, in the X-rays that you have examined here?

A. There is evidence of arthritis in the lumbar spine, mainly; some in the dorsal spine.

Q. Any arteriosclerosis? A. Yes.

Q. Well, how do these pictures stack up with the average ordinary hard-working person that has had some exposure and also work at hard labor? [346] How does Mr. Farley compare to the average person?

(Testimony of Lawrence J. Cohen.)

A. Well, I think for a man of Mr. Farley's age that people his age have hypertrophic arthritis and they have arteriosclerosis. There is one point, however. In his upper lumbar spine that is a little more osteoarthritic than the average person's at his age.

Q. Well, upon your last examination, Doctor, what was your opinion as to the extent of his ability to follow a gainful occupation?

A. Well, I felt that he could not do—he probably couldn't go back to hard lifting and work that he had done before but he should be able to do a fair amount of work, one that didn't involve heavy lifting. But, he should be able to get on his feet. He should be able to do some work.

Q. Would anything that you find in his condition make it inadvisable for him to paint the outside of buildings, for example?

A. I think he could paint. I think, however, that he might have some pain in his shoulder from painting. But, if he were working above his head much I think you could paint and try again.

Q. Well, is there anything wrong with the other shoulder, the one where the clavicle was not broken?

A. No, nothing wrong.

Q. Well, is there any reason why that arm can't be used for painting?

A. Not at all.

Q. Is there any limitation in that arm?

A. None. None.

Q. Did he complain of any pain in it?

A. No, sir.

(Testimony of Lawrence J. Cohen.)

Q. Which shoulder was it that he had injured?

A. The right.

Q. The right shoulder. He was, according to testimony, a right-handed man?

A. Yes, sir.

Q. Is it something not too difficult to accustom yourself to working with your left hand when your right one is disabled?

A. Oh, you can do it. When you get a little older it's pretty hard to change over.

Q. Harder when you're older? A. Yes.

Q. Could you give us an idea as to what types of occupation you think Mr. Farley could follow that, of course, wouldn't require particular training or education?

A. Well, I think he could be a watchman. I think he could do gardening and that would include many varieties of gardening, of course. Carrying of heavy loads, you couldn't carry as much as he could before, I think, but he could probably [348] use a little handcart to push some loads around. I think he could be a salesman. I think he could work in a grocery store. Oh, I think he could do innumerable jobs.

Q. On land. But, you wouldn't advise his going back to sea?

A. Well, I think he could still go back to sea too if he didn't have to climb much or do heavy work. I think he could be back to sea. I am really not acquainted with all the jobs at sea that you can do.

(Testimony of Lawrence J. Cohen.)

Q. There are occasions when they climb up and down ladders and also have to lift fairly heavy objects 75 to 100 pounds, anyway.

A. I think it would be hard for Mr. Farley to lift 75 or 100 pounds.

Q. Now, would any work of a heavy nature cause him any injury now or it just the matter that it would cause him pain?

A. It would cause him some pain.

Q. It would cause him pain. But as far as lifting is concerned even that he could—could he injure himself further by doing heavy lifting?

A. No, he would not injure himself further.

Q. And his limitation is due to the fact that at a certain point the thing might become painful?

A. That's right.

Q. Is that right? A. Yes, sir.

Mr. Krause: I think you may cross examine.

Cross Examination

Q. (By Mr. Williams): Now, Doctor, when you made your first examination of Mr. Farley it was, I see here, a little over a year before you made a second. You made two examinations?

A. That's right, sir.

Q. A little over a year apart, is that correct?

A. Yes.

Q. And, the second time you saw him did that pretty much confirm your earlier diagnosis; that is to say, did you find it substantially the same as you found him the first time?

(Testimony of Lawrence J. Cohen.)

A. I found his back substantially the same, yes. I found his shoulder better.

Q. Shoulder was better. Back about the same?

A. (Witness nods head.)

Q. Your earlier report, you feel, is correct as of this date except for the change in his shoulder condition? A. Yes.

Q. Now, Doctor, if you were to assume that a man fell from a height approximately 20 feet and [350] landed on another man's head and shoulder and the person who had the man land on him were to come in and see you—well, let's say, a matter of a few months after the injury and you were to find the existence of four compression fractures, let's say, the seventh, eighth, tenth, and twelfth dorsal vertebrae, would it be your conclusion that the accident had caused that injury?

A. If the man told me that he had no trouble before I would have to make that conclusion.

Q. Well, now, Doctor, it is true, isn't it, that it would take a very—it takes a very substantial force to cause a compression fracture of a vertebra, does it not? A. Yes.

Q. In other words, you don't get a compression fracture just working around the house, or something of that nature, unless you fall or—

A. That's right.

Q. —or a sudden force is exerted upon the— A. That's right.

Q. You don't get one from the same sort of

(Testimony of Lawrence J. Cohen.)

an accident that would produce a hernia or lifting, it wouldn't cause a compression fracture?

A. No.

Q. And if you assumed a man fell on Mr. Farley in this case on about April 6, 1952, is there [351] any doubt in your mind if you assume further that he has had no pain in his back prior to that time—is there any doubt in your mind but what that accident caused these compression fractures that you found two years later?

A. If I assume those things there is no question in my mind.

Q. There was no question. You find, I think you stated, an ordinary amount of osteoarthritis in this man's dorsal and lumbar spine? A. Yes.

Q. Average for his age and occupation, you would say? A. (Witness nods head.)

Q. Now, you have stated, have you not, that it would take a substantial force to cause those multiple compression fractures that you have related? In other words, that isn't the sort of—you don't get injuries like that from a light accident, it's a substantial force exerted in order to cause those compression fractures, is it not?

A. Oh, you could get an injury just like this from riding in an automobile.

Q. You mean if you were—your body were to move rapidly?

A. Without hitting anything.

Q. Yes?

(Testimony of Lawrence J. Cohen.)

A. Snapped forward you could get practically the same thing. [352]

Q. But, in either case that would be a substantial force? A. Yes, I would say it is.

Q. It takes a hard blow? A. Yes. A snap.

Q. You would say substantially traumatic injury wouldn't you? A. Yes.

Q. Now, when a man has osteoarthritis he may well have it at the age of 58 may he not and have no pain or disability from it at all?

A. That's right.

Q. Now, when he is subjected to a force sufficient to cause at least four compression fractures to his spine, is it not true that you would ordinarily expect to find the aggravation of that pre-existing osteoarthritis?

Mr. Krause: Now, your Honor, I don't think there was testimony that there were four compression fractures. There are three with a possibility of a fourth. That's all I heard either doctor say.

The Witness: That's right.

The Court: Do you want to rely on your hypothetical or do you want to change it?

Mr. Williams: Well, my understanding is—perhaps I was—well, I will withdraw the question.

Q. Let's just assume that there are only three [353] for the purpose of the question. Can you answer that, Doctor, all right? Have I given you enough facts to enable you to—

A. Yes. I really don't know.

Q. Yes?

(Testimony of Lawrence J. Cohen.)

A. I don't know. I can only say this that the X-rays that I looked at, if I may mention that, which were taken very early, two months after the injury, had the same amount of arthritis that is present now by X-ray. So, it hasn't changed any by X-ray.

Now, if you say "Symptomatically would it change?" that would depend on whether I assumed the man had no trouble before——

Q. Yes.

A. ——and now has trouble. I would have to make that assumption.

Q. Very well. Doctor, will you please assume that the man has had no difficulty with his back, no symptoms of pain or limitation of motion, prior to the injury such as I have described where a man fell approximately 20 feet on him landing on his head and shoulders causing multiple compression fractures of his dorsal spine. If you assume that at the time of that injury the man had average osteoarthritis for a man of his age would you not normally expect that such a force as that could cause an aggravation of that osteoarthritis? [354] Would you not normally expect that?

A. I would normally expect it, yes. I would normally expect it.

Q. Yes. And, if your expectations were followed by complaints of pain and disability or limitation of motion in the dorsal back area would that further firm up your conclusion?

A. Not particularly.

(Testimony of Lawrence J. Cohen.)

Q. It would not? Why, Doctor? You mean because——

A. Well, you can have limitation of motion without arthritis. You can have limitation of motion in a child who is injured. You see, a child who has an injury of the back and compression fracture exactly like this will have limitation of motion.

Q. Just from the compression fracture?

A. That's right.

Q. I see.

A. And, as time goes by they may still have some limitation of motion without arthritis.

Q. Yes?

A. Now, I am not sure—I am really uncertain about the whole question of what aggravation means. Unless I could see these things in a knee joint or in a hip joint I cannot rightly say that the arthritis is aggravated. I can only say that muscle spasm or muscle pain is limiting. Because of the pain factor I can't truly say that arthritis has been aggravated.

Q. Well, you can't ever demonstrate that by X-ray, can you, Doctor, generally?

A. Yes, you can occasionally demonstrate it by advancement over a period of a year or two years during that period.

Q. That is unusual, is it not, in the back area?

A. Yes, in the back area it is unusual because it is so confusing. The whole back area is confusing because after you reach in your fifties you get arthritic changes and we never know. In this man

(Testimony of Lawrence J. Cohen.)

nothing struck me particularly as being arthritically or differently arthritic. I felt that his back pain was the result of compression fracture areas and disturbance of muscle functions and——

Q. In that area? A. In that area.

Q. Yes. You feel that with a force sufficient to cause these multiple compression fractures that there would be attendant strain of ligaments and muscles in there? A. Yes, I do. Yes.

Q. And, in a man his age is it likely that all of that would heal entirely; that is, those soft-tissue injuries?

A. I don't think they heal as we speak of healing, to go back to a period of time as it was exactly before. I don't think that's possible.

Q. I see. You mean although there may be no inflammation there—— A. Yes. [356]

Q. ——that the structures are not the same as they were before? A. That's correct.

Q. Doctor, I think you mentioned—and I think inadvertently—that the fracture to the twelfth vertebra was nearly imperceptible. Would you like to look at your X-ray again on that? I don't believe you mean the twelfth when you say that.

A. Maybe I don't.

Q. I think you mean the tenth.

A. Yes. Maybe so.

Q. Because I believe you will find from your report and other items that there is a very substantial wedging of the twelfth. Is that not correct?

A. Yes, you are right.

(Testimony of Lawrence J. Cohen.)

Q. Yes?

A. It is the twelfth. And, the minor fracture of the tenth which is possible——

Q. On the upper surface of the tenth, is it not?

A. Yes.

Q. Doctor, do you have your X-rays before you?

A. Yes.

Q. Do you have a view of the back—I know I [357] will not describe it correctly from a medical standpoint——

A. I haven't put these in. These haven't been recorded.

Mr. Krause: Well, we have listed them here and we are going to offer your X-rays in evidence, Doctor.

The Court: Any objection?

Mr. Williams: No objection.

The Court: They will be received.

(X-rays of Dr. Cohen were thereupon received in evidence as Respondent's Exhibit Number 4.)

Q. (By Mr. Williams): Doctor, do you have an X-ray view of Mr. Farley's back when you are standing behind him looking at it?

A. Standing behind him?

Q. Standing behind him looking at it?

A. Yes.

Q. Looking at his back?

A. I have one of these.

Mr. Williams: May I approach the witness, your Honor, so I may question him?

(Testimony of Lawrence J. Cohen.)

The Court: Yes, you may.

The Witness: Would you put that up?

(Whereupon the Crier placed the X-ray in the view box.)

The Witness: This is '53. Here is one of the [358] back. Is that the one you mean?

Mr. Williams: Yes, I think so.

Q. This is not a particularly good view to demonstrate these irregularities, is it, Doctor? A side view is better? A. Yes, a side view is better.

Q. Do you notice any irregularity in the fourth dorsal vertebra on the right side particularly?

A. Well, yes. The trouble with this on the fifth—and it's on the sixth—you see, and that could be the mild curvature there at that portion of the back and there is something that looks like it on the third. Yes, I notice irregularities but I don't think they are fractures.

Q. You don't think they are old fractures?

A. No.

Q. Or you are unable to say that they are? You say they are not?

A. I don't think so. That doesn't look like it to me. There is one there (indicating) and there is another on the right side.

Q. Yes?

A. And this is the first, second, third, fourth.

Q. No. I would think—and there is——

A. And there is one on the fifth. I would think that is the result of the mild curvature, we call it,

(Testimony of Lawrence J. Cohen.)

a little scoliosis. And, that would produce a [359] different size on one as compared to the other.

Q. Yes. That sort of notching, you might say, in the side view of it, is that a normal condition?

A. This (indicating)?

Q. Yes?

A. Yes, that is relatively—it's not normal but as you grow older and you develop a scoliosis you will get a wedging on one side as compared to the other. The concave side of a curve is narrower than the convex side of a curve, therefore, it is a little smaller on that side. No, I would think that that——

Q. Now, Doctor, have you an X-ray of the side there? A. Yes.

Q. Indicating E-7?

A. This is the seventh and the eighth. Nine is all right. Ten—well, ten could be reported. Now, ten is lower down.

Q. You can't see but, on this film, Doctor—this is D-8, is it not? A. Yes.

Q. Is that about half of it's normal body?

A. I would say approximately half.

Q. And this one here that is D-7 is the posterior side of that preserved or is that kind of squashed down too?

A. I think it is practically preserved. [360]

Q. It is the anterior portion of it?

A. Yes. I think it may be a millimeter or two.

Q. That is a fairly severe wedging, is it not?

A. This one (indicating)?

(Testimony of Lawrence J. Cohen.)

Q. Yes.

A. No, I would not say that is severe.

Q. But, it is a marked one, at least, not at all difficult to pick up?

A. That's right. Severe wedging, I would consider this here (indicating).

Q. Well, there actually isn't much of a wedge-shape, is it, it is squashed flat?

A. It's squashed in it—well, not squashed.

Q. But, I mean to say—I mean, practically uneven. It isn't wedged?

A. Yes. Back and front with the front a little more than the back. But, the whole vertebra—the whole body is down.

Q. When you observe injuries of the type that we have described here where a sudden force is exerted on a man's head and shoulders, do you normally find that is often transmitted into the dorsal spine? Is that where you normally find it?

A. Almost always in the dorsal when they are hit on the head and shoulders.

Q. They don't get it down in the lumbar or cervical? [361]

A. Oh, they do, but—

Q. It is more often—

A. In the dorsal spine.

Q. Do you have a view showing the twelfth?

A. Yes. This is the twelfth.

Q. Right there (indicating) that shows the wedging that you spoke of?

A. Yes; the wedging anterior.

(Testimony of Lawrence J. Cohen.)

Q. Wedging on the anterior surface of it?

A. Yes.

Mr. Williams: I believe he has indicated this one, your Honor (indicating).

The Court: Yes.

Q. (By Mr. Williams): Doctor, when you made your first medical report of Mr. John Farley, did you write up a formal report of it? A. I did.

Q. You did? A. Yes.

Q. In letter form? A. Yes, sir.

Q. Is this a copy of that report (counsel hands document to the witness)? A. Yes, it is.

Mr. Williams: I believe counsel—— [362]

The Court: What exhibit is that?

Mr. Williams: I beg your pardon, your Honor?

The Court: What exhibit is that?

Mr. Williams: That is Exhibit 2. It's not yet been offered.

Mr. Krause: Well, yes. Of course, it wouldn't be evidence.

The Court: I understand that.

Mr. Krause: Now, I don't know what purpose counsel has in introducing it. If he means to impeach the witness in any respect I think he is obligated to show that portion to the witness.

(Whereupon the Crier handed the document from Mr. Krause to the witness.)

Mr. Krause: Very good. Oh. That is the first report, yes.

Mr. Williams: Yes, the first report.

Q. First of all, before I ask you about that,

(Testimony of Lawrence J. Cohen.)

Doctor—— A. You may, yes.

Q. ——do you feel that the largest portion of this man's injury is due to his age or—excuse me—of his disability and his pain is due to this injury, or is it due to his age?

A. I would say the largest—I would say the [363] larger part is due to the injury.

Q. Is due to what? A. To the injury.

Q. Due to the injury?

A. (Witness nods head.)

Q. You think he will always have pain from the condition which you find there right now?

A. Yes, I think so.

Q. You think he always will? A. Yes.

Q. Do you think he can stand for long periods of time?

A. What do you mean by "long periods"?

Q. Well, I mean over, let's say, fifteen or twenty minutes? A. Oh, yes.

Q. Without considerable pain?

A. Oh, yes; I think so.

Q. You think so? A. Yes.

Q. You think he could stand for over an hour, Doctor? A. Yes, I do.

Q. You do? A. Yes.

Q. Well, in your report, for example, you stated, "I am certain that he cannot stand for long periods of time." [364]

A. I mean three hours and four hours.

Q. Oh. That's what you meant by that?

A. Yes.

(Testimony of Lawrence J. Cohen.)

Q. Do you feel that he can do any work that requires lifting or very much bending?

A. No, I don't think he can do that now.

Q. Yes.

A. He might be able to do it in two or three years.

Q. Do you think——

A. I think right now as you look at him I don't think he can do any heavy bending or lifting.

Q. Do you think his condition is the same now—do you think it is substantially stationary now or do you think he is going to get considerably better? What do you think?

A. Of course, the question of something being stationary is entirely relative.

Q. I realize that.

A. If somebody said that after such a period of time it is probably or, perhaps, stationary I think that that's probably not true.

Q. Oh. You don't think he is stationary now?

A. No. I just want to finish.

Q. Oh. I'm sorry, Doctor. I misunderstood.

A. I just want to say that in injuries there is pain. Now, I think it is stationary as far as the [365] compressibility of the vertebrae is concerned or it's stationary as far as the ligamentous structures are concerned but I don't think it is stationary as far as relief of pain is concerned. And, that is the most disabling thing according to Mr. Farley that exists here and that is the most disabling thing as far as I am concerned is his pain,

(Testimony of Lawrence J. Cohen.)

not in any way the structural phenomena in this injury.

Q. Doctor, there is a substantial limitation in motion of his back, is there not? A. Yes.

Q. That you can demonstrate?

A. Yes. But, that isn't the place where limitation of motion occurs. The dorsal spine almost has no motion in it, ordinarily. If you recall my physical examination, backward extension is limited by only fifteen—oh, no—there is no list of the trunk. The fingers come within thirteen inches of the floor which is a substantial limitation of motion.

Q. Yes?

A. But, when you put them—him down on his back the straight-leg test is negative bilaterally. Now, that is a very important thing. If you are able to get a straight-leg test up to 90 degrees then you should be able to bend at least 90 degrees from your hips. If you bend less than that it's subjective [366] pain. Therefore, it is my feeling that he will have more motion if the pain factor was not evident.

Q. What do you think causes the pain factor, Doctor?

A. Oh, I think that several things could cause it. I think, one, the injury; I think, two, the man's age; I think, three, his temperament. I think people who absolutely have a relatively low threshold of pain would probably be able to do a considerable amount of work more than Mr. Farley. That, of course, is a personality factor over which the

(Testimony of Lawrence J. Cohen.)

individual, perhaps, has no control. But, nevertheless, I believe that that is a definite fact in this particular injury.

Q. Well, did you arrive at that conclusion just from two physical examinations of Mr. Farley?

A. I arrived at the conclusion because of the injury and seeing other injuries. The injury occurring at D-8 which is not, as I said, a quiet zone. D-12 is rather mild. I arrived at the injury by seeing what other people do with that type of injury. I arrived at it because in low injuries of the lumbar; that is, with rather marked contractures, I have seen incredible return of function. And, in addition, I arrived at the conclusion by the straight-leg test and the negative neurological and the absence of atrophy of the extremities. Those are the things that allow me to arrive at that conclusion. [367]

Q. Doctor, do you think that in an individual, let's say, that is not quite Mr. Farley's age but younger, would you not normally expect to find considerable pain and disability in any individual who sustained four compression fractures?

A. Oh, yes.

Q. It is not his age alone that is causing it, is it?

A. No, it is not. Oh, no. I said that's a factor only.

Q. Yes. And, his pain that he complains of could well be attributable to arteriosclerosis or just to osteoarthritis which has been aggravated by the injury?

(Testimony of Lawrence J. Cohen.)

A. It could be. It could be. I cannot say, but it could be.

Q. You don't mean to indicate that he is exaggerating his symptoms to you?

A. Do I think that?

Q. Yes. A. I am not certain. I am not sure.

Mr. Williams: I believe that's all the questions I have.

Redirect Examination

Mr. Krause: May I ask whether that report of the Doctor's is in or not now?

The Court: It hasn't been offered. [368]

Mr. Williams: It's not been offered.

Mr. Krause: You haven't offered it?

Mr. Williams: No.

Q. (By Mr. Krause): However, this report that counsel was referring to was made by you somewhat over a year ago? A. That's right.

Q. Now, did you find any evidence of any disability in Mr. Farley with respect to his knees, for example? A. His knees?

Q. Yes, at that examination? Did he have free use of his knee joints or was there limitation in the knees?

A. There was crepitation noted in both knee joints.

Q. Well, what is crepitation?

A. Flexion is limited in the knee joint by 25 per cent bilaterally. Crepitation is crackling and that is a sign of arthritis.

Q. Of arthritis? A. (Witness nods head.)

(Testimony of Lawrence J. Cohen.)

Q. Now, when you say that he had 25 per cent limitation of motion in the knee is that 25 per cent of what a person would normally—figuring that you normally have a hundred per cent of motion, or how is that figured?

A. Well, yes. You would ordinarily—the ordinary motion in the knee joint in a young, vigorous adult or in a young adult is from 180 degrees of [369] extension (demonstrating) to a point of flexion where the heel touches the buttock.

Q. How many degrees would that be?

A. That would be from a hundred and eighty to about thirty-five. So, it's 35 minus 180.

Q. You found that limited about 25 per cent?

A. Yes.

Q. In both knees? A. Yes, sir.

Q. Did he complain of any trouble with his knees at that time? A. He did not.

Q. Now, ordinarily, with that much of limitation of motion in the knees, is that regarded as a disability?

A. Not if a man has no pain and no disability. It will keep him from going into genuflexion. He can't genuflect all day.

Q. Well, you would be a hundred per cent if you had full range in your knees, wouldn't you?

A. You would have a hundred per cent motion, yes.

Q. Now, do orthopedists consider there is a disability when you have a limitation in the range of motion of any joint? A. Oh, yes.

(Testimony of Lawrence J. Cohen.)

Q. You might not be using it in your particular business but for some operations you would be [370] prevented from doing them by that limitation? A. That's right. Yes.

Q. Now, we have been saying here that he has arthritis, evidence of osteoarthritis, about equal to what you usually find in men of his age. Do you find that much limitation of motion in the knees in the average man fifty-eight years of age?

A. Not uncommon. You should.

Q. Do you find crepitation bilaterally?

A. Yes, you find crepitation bilaterally commonly.

Q. Commonly? A. (Witness nods head.)

Q. But, still with full range of motion?

A. Fairly often full range of motion at fifty-eight.

Mr. Williams: Excuse me. May I have the answer again? I didn't hear.

The Witness: Very often at the age of fifty-eight we find full range of motion.

Q. (By Mr. Krause): Now——

A. In the seventies, however, it cuts down.

Q. Yes. Now, did the man give you any history of having injured those knees in this accident that we are now discussing? A. No, sir.

Mr. Krause: You may cross examine. [371]

Recross Examination

Q. (By Mr. Williams): Now, Doctor, it is entirely possible that the force transmitted on his

(Testimony of Lawrence J. Cohen.)

head and shoulders would be sufficient to cause an aggravation of an arthritis in the knees just as well as any other place in the body, is it not?

A. I would say it is hardly likely.

Q. Why not? I mean, they are supporting the weight of the body also.

A. Well, so are the hips.

Q. I beg your pardon? A. So are the hips.

Q. Yes? A. I think.

Q. The force would be transmitted all the way down to the soles of his shoes, wouldn't it?

A. Yes, they would. But, I think if a force sufficient to injure knees would be transmitted to the knees it would have to be transmitted through the hips in order to do it and the hips should get something too. The hips didn't get it too. It would have to hop the hips and go into the knees. I would say it is not likely.

Q. Of course, Doctor, you don't know but what this man may have been knocked down on his knees by the force. I mean, in other words, he—— [372]

A. He didn't——

Q. He had to fall some way and it is possible his knees could have struck directly on the ground around there? A. It is possible.

Q. In which case you would expect it to cause something like what you found, I presume, would you not? A. Well, no.

Mr. Krause: Your Honor, may I say that there isn't a word of testimony that he sustained any injury to his knees.

(Testimony of Lawrence J. Cohen.)

The Court: Purely speculative.

Mr. Krause: Just speculating on something not in the record.

Q. (By Mr. Williams): Dr. Cohen, what is the 25 per cent flexion of limitation that you refer to? What movement is that?

A. Maybe I can show that (demonstrating). If you take your knee, ordinarily you can make your knee touch your buttocks. Now, Mr. Farley's was about to there (demonstrating).

Q. About to there?

A. Now, that's 25 per cent of flexion (demonstrating). Now, I don't say it is 25 of the whole distance.

Q. Yes?

A. Mr. Krause, I don't say it's 25 per cent of [373] from 180 to 35. It is 25 per cent of flexion from here (demonstrating) to there (demonstrating).

Q. Of that?

A. Of that arc. Now, we find that—we don't find—as I say, we find that there is nothing terribly unusual about it. But, it is not common.

Mr. Williams: I have no further questions.

Mr. Krause: That is all, Doctor. Thank you.

The Court: That's all, Doctor. You may step down.

Mr. Krause: May I have my copy of that report back?

(The witness hands the document to Mr. Krause.)

Mr. Krause: Thank you.

The Court: We will recess until 1:30.

Mr. Krause: As I say, your Honor, the only witness we have is to complete Mr. Larson. Now, if your Honor is going to be accommodated by going through I think all of us could do it if that would be all right.

The Court: How long do you anticipate it will take you?

Mr. Krause: Well, Mr. Larson is on cross examination.

Mr. Williams: I haven't started yet, your Honor. I don't think it would take very long.

The Court: Well, let's get that behind us then.

Mr. Krause: We have just reached that point.

Mr. Larson, would you go back, please?

HERMAN H. LARSON

produced as a witness on behalf of the Respondent, having been previously sworn by the Clerk, was examined, and testified as follows:

Cross Examination

Q. (By Mr. Williams): Mr. Larson, since 1954 you have not made any foreign voyages, is that correct? A. Not foreign voyages, no.

Q. You're making just inter-coastal and inter-river voyages? A. Coastwise.

Q. And who do you work for?

A. West Coast Trans-Oceanic Steamship Company.

(Testimony of Herman H. Larson.)

Q. Is that company the successor of W. R. Chamberlain Company, do you know?

A. That I don't know. I really couldn't say.

Q. You work for them exclusively?

A. Yes. That's right.

Q. Captain, when men are aboard a liberty launch going on shore leave do they have any particular duties or responsibilities toward the ship at that time if you assume that the launch is a privately-operated launch and not the ship launch?

A. I don't think I know what you mean by——

Q. Well, are they on duty when they are in a liberty launch going ashore, Captain?

A. Are they on duty?

Q. Yes? A. No.

Q. And do they have any duties with regard to other men in that boat at that time pertaining to the ship?

A. Well, as an officer he has the duty to see that men not alone conduct themselves properly and also that they do not jeopardize themselves in any way.

Q. Is it your testimony, Captain, that a second assistant engineer would be in charge of a liberty launch? A. No, sir. No, sir.

Q. It's true, is it not, there is no one in charge under those circumstances?

A. The operator of the launch is in charge.

Q. Correct.

A. I might qualify that by saying, as it often has been done, the operator of the launch is in

(Testimony of Herman H. Larson.)

charge with the exception that when the Master of the vessel——

Q. Is aboard?

A. He doesn't—he has no—doesn't give orders as to the actual operation of the launch but where the destination of the launch and its coming and going at certain intervals and times, that is up to the Master. [376]

Q. Yes. When someone is on board a liberty launch, it's true, is it not, if he is an officer, we will say, a second assistant engineer, it is true, is it not, that he has no duties with regard to the ship's crew until they all return to the ship?

A. Well, no actual duties any more than as an officer. At all times an officer has the responsibility to see that there is no injuries or no acts committed that should not be committed. That is the duty of an officer no matter where he is.

Q. You mean ashore?

A. Not on shore, no. No. Coming and going to the ship on the launch.

Q. Do you think he is at duty when he is coming and going?

A. It's not a duty, it is a moral obligation an officer has.

Q. I concede that that is probably correct. Now, Captain, how is the training given to the men aboard the ship? Who gives it as to how a Jacob's ladder should be climbed?

A. How it should be climbed?

Q. Yes. A. Well——

(Testimony of Herman H. Larson.)

Q. Is that the Master's duty or is that someone else's duty? [377]

A. No. I can't recall of anyone ever giving anybody any instructions how it's to be climbed. That seems to be natural with a man knowing it for his own safety when he climbs it.

Q. Well, Captain, let's assume that you have crew members aboard the ship that have never been to sea before. Who will give them the instructions as to how to climb the Jacob's ladder?

A. Now, first of all, when a man goes to sea he is cleared by the Coast Guard.

Q. Yes?

A. And, the Coast Guard accepts that man as being fully able to not alone climb a ladder but go aboard a vessel without endangering himself.

Q. Well, then, it is your testimony he doesn't need any instructions?

A. Well, I can't see where he needs it. It comes by the experience aboard a ship.

Q. Well, suppose you have a man aboard a ship who has had no experience, he has had none, we'll say, in conducting himself about a ship or in climbing ladders.

A. Well, he shouldn't be on a ship if he doesn't know how to climb a ladder. I can assure you of that because there is so many ladders to climb.

Q. Could you find out as they come aboard [378] which ones are trained and which are not?

A. That is a thing that you would have to go

(Testimony of Herman H. Larson.)

and ask each man, "Have you ever climbed a ladder?" You understand, that isn't done.

Q. You don't do that? A. No.

Q. You don't attempt to find out if the men have had previous training?

A. When a man comes aboard a ship he is sent aboard by the union and when he is accepted in the union he is supposed to be qualified to do the work he is sent down to do and that irregardless of whether he is on deck, steward's department, or engine room. It doesn't matter. He is supposed to be qualified. You accept him.

Q. You assume he is?

A. You accept him as that. He shouldn't be a member of the union or he is not accepted in the union unless he is qualified.

Q. Well, is that true with regard to the members of the steward's department? Are they quite experienced at getting around on a ship?

A. That's—they are accepted as that.

Q. Is it not true that they are the least experienced as far as seamanship is concerned——

A. Oh, yes. [379]

Q. ——of all the men on the ship?

A. They are not required to do any seamanship's work.

Q. Yes.

A. But, they are required to get up and down ladders aboard ship.

Q. Which ones?

A. Going various places, going down to the ice-

(Testimony of Herman H. Larson.)

boxes. They go down there to do that—down ladders to do that.

Q. Do you know, is it a vertical one or one that has some stairs, steps on it?

A. There is a ladder of an angle.

Q. It's at an angle? It's not a vertical one?

A. No, not that one.

Mr. Williams: I have no further questions, your Honor.

Mr. Krause: I have no further questions, Captain.

The Court: Can counsel advise me, is there anything in the contracts with the union with reference to retirement age?

Mr. Williams: There is——

Mr. Krause: No.

Mr. Williams: ——there is no testimony on that. There is none as regards this individual.

The Court: My recollection is there is none.

Does either party propose to offer any evidence as to whether a seaman works up until the day he is expected to die? [380]

Mr. Williams: Well, your Honor, we have the possibility of putting on some rebuttal and I expected to use Mr. Farley.

The Court: Well, of course, you put on your life-expectancy witness.

Mr. Williams: Yes.

The Court: And, it just occurred to me on your evidence for damages that you have in the case, do you expect he would die aboard ship?

(Testimony of Herman H. Larson.)

Mr. Williams: Well——

The Court: A natural death at the end of his expectancy?

Mr. Williams: Well, our testimony would be that we would not expect him to work full time as a marine engineer up to age seventy-five, which would be a life expectancy. We wouldn't contend for that, your Honor. But we will contend the age he is able to work is much longer than it is for ordinary men in other occupations. Because of the training and the specialization of it he is able. And that there is no compulsory retirement age.

The Court: Either party going to offer any type of evidence of what the practice is or how long a man in relatively good health does——

Mr. Williams: We could offer it through Mr. Farley, then. [381]

The Court: I will wait then.

Mr. Krause: Well, we have Captain Larson on the witness stand.

Redirect Examination

Q. (By Mr. Krause): How old did you say you were, Captain?

A. I will be sixty-nine within four months.

Q. You have continued going to sea until how long ago? I mean, steadily?

A. Well, in '54. But, I started going to sea as a boy in the old country and I have gone to sea practically all my life with the exceptions of I was ashore for three years from '20 to '23. Outside

(Testimony of Herman H. Larson.)

of that I have continually gone to sea. And, my reason for retiring is not on account of my health, it is—if you may excuse me—to explain it this way: that my family and my children have grown up and left the home and it is just the wife and I. And, she brought up the point that she has been saying good-bye to me for so many years that the few years we had left she wanted me to stay at home. And, that's the reason I retired.

Q. Well, you would say that you would still be able to go to sea now?

A. And, I hope—I might say this that if I can talk my wife out of it I will still go to sea. I long to go. [382]

Q. Now, as far as age is concerned for Masters and licensed officers on merchant vessels, it just depends upon whether they are physically fit and able as to whether they continue to go to sea?

A. Yes.

Q. Is that right?

A. (Witness nods head.)

Q. There is no age limit now?

A. Not that I would know of, no.

Q. Yes.

A. I might add that you have mentioned, brought the subject up, the States line had an engineer going to sea with an artificial leg and he did very well and he was there for a number of years. And, I have seen an engineer with one arm even. I have had them with me and they have done

(Testimony of Herman H. Larson.)

very well. So, I can't see physically there should be any great handicap for a man not going to sea.

Mr. Krause: I think that's all, Captain.

Reeross Examination

Q. (By Mr. Williams): Captain, did you know an engineer by the name of Mr. Fred Sprague that has been around here in Portland?

A. Yes, sir. I was shipmates with him.

Q. Died recently, did he not?

A. I think so, yes. [383]

Q. Do you know if he worked as a night engineer up until the time that he died?

A. Well, that I don't know because I wasn't home. I was sailing at that time.

Q. I see. Do you know how old he was?

A. He was very old, I can assure you. But, how old, I can't—

Q. Was he in his early eighties, do you know?

A. Yes, he was very—

Q. But, you don't know—how long ago has it been that you know that he was still working?

A. Well, I would say probably three, four years.

Mr. Williams: I have no further questions.

The Court: That's all, Captain. You may step down.

The Witness: Thank you.

The Court: Well, I take it that completes the testimony and you will have your deposition matters?

Mr. Krause: Well, I should offer some of my

exhibits here that haven't been offered. Well, I guess we don't need that, the deposition of Libellant. Deposition of Glenn Morgan, deposition of William J. Accurso. That's 2 and 3. The X-rays of Libellant. They have already been identified and offered. The physical and medical records of John Farley at the United States Marine Hospital at Seattle. [384]

Mr. Williams: I have no objection to any of those, your Honor.

The Court: They will be received.

(Whereupon Respondent's Exhibits 2, 3, 4, deposition of Glenn E. Morgan, deposition of William J. Accurso, and medical records of John Farley, respectively, were thereupon received in evidence.)

[See Exhibit 2 at page 501, and 3 at page 547.]

Mr. Krause: That is 5.

Mr. Williams: Yes.

Mr. Krause: Then, 6, also, medical records of John Farley of the Portland office, they are there. I offer them.

Mr. Williams: No objection.

The Court: They will be received.

(Whereupon Respondent's Exhibit 6, envelope containing records of treatment of John Farley, previously marked for identification as Respondent's Exhibit 6 was thereupon received in evidence.)

Mr. Krause: The rough log of the Augustin Daly is in?

The Court: Those have been received.

Mr. Krause: I am wondering, nothing appeared [385] that I can recall as to why both our rough and smooth log should be in. I brought the smooth log along too but we don't want to have it in here unless there is some reason for it.

Mr. Williams: Well, I have not had an opportunity to examine it thoroughly, Mr. Krause. Unless you have some objection——

Mr. Krause: Well——

The Court: My notes show that we designated the smooth log as 7-A.

Mr. Krause: 7-A, yes.

The Court: That was received.

Mr. Krause: Well, that was because counsel said he wanted it here because he thought there was some discrepancy between the two. Now, nothing has appeared so far on that but perhaps we can leave it here and take it out later if it appears it's not necessary.

Now, the doctor's office records were not brought in but the doctor testified that they would have been necessary to impeach—but the X-rays are here and that is Exhibit 8.

The Court: The X-rays as Exhibit 8.

Mr. Williams: That is under 4.

The Court: Are they under 4? I think those were separate X-rays, weren't they? [386]

Mr. Williams: They would be under 4 as X-rays.

Mr. Krause: The X-rays, those were the Public Health Service records as 4, I think. Is that right?

The Court: The X-rays, Exhibit 8, then, will be received.

(Whereupon Respondent's Exhibit 8, X-rays, previously marked for identification were thereupon received in evidence.)

Mr. Krause: And the Articles of the Augustin Daly, they are here and have been offered.

The Court: They will be received.

(Whereupon Respondent's Exhibit 9, shipping Articles, previously marked for identification were thereupon received in evidence.)

Mr. Krause: License and oath of John Farley. It is the stub of the license of John Farley.

Mr. Williams: Your Honor, I will object to the admission of it on the simple ground it has no relevancy to the case.

The Court: What do you claim for it, Mr. Krause?

Mr. Krause: Well, he takes an oath when he gets this license that he will obey all laws of the United States. Now, that, I would suppose, would [387] include any duties that he has under the law as an officer on the vessel.

The Court: But, what is his obligation when he signs the Articles?

Mr. Krause: The Articles?

The Court: Yes. Is there any obligation contained in those?

Mr. Krause: On the Articles, he signs the Articles like all crew members do with the Master

agreeing not to bring grog aboard the vessel and to obey all the lawful orders of the Master.

The Court: That's all. I didn't know just how far that went. Well, under your theory then it will be received.

(Whereupon Respondent's Exhibit 10 being the second assistant engineer's license of John Farley, previously marked for identification, was thereupon received in evidence.)

Mr. Krause: Now, the deposition of Johnson, you have that one there, Mr. Clerk.

The Court: I guess it hasn't been marked, has it?

Mr. Williams: I don't think it has.

Mr. Krause: Oh. That only just came in. It was taken in San Francisco and arrived here after we started the trial, I think. [388]

Mr. Williams: Yes.

Mr. Krause: Deposition of S. L. Johnson. Well, that is all we have, your Honor.

The Court: Do you have the Johnson deposition?

Mr. Krause: Yes. The deposition of S. L. Johnson.

The Court: That should be marked Respondent's Exhibit 11, I take it.

Mr. Krause: Now, your Honor, may it be stipulated that any of the exhibits that were offered and received, counsel may read or quote in memos any parts of them without reading them into the record here at this time?

The Court: Let the record so show that that is satisfactory.

Mr. Williams: Yes, your Honor.

Mr. Krause: That's all we have, your Honor.

The Court: What is the desire of counsel, do you want to be heard orally or do you want to present it by memo?

Mr. Williams: Well, I have no preference, your Honor. Does your Honor wish to have—I feel it is necessary to give your Honor briefs on the law in this matter. It is somewhat complex.

The Court: I think your facts are not too difficult in this matter and I believe that your respective theories are supported by your authorities. [389] If you want to be heard orally I will hear you at 1:30 or if you want to file a memorandum at a later time and be heard orally it is all right.

Mr. Williams: I would prefer to do it at a later time, your Honor. There are several things in these various depositions—I think Mr. Krause perhaps agrees—that should be pointed out.

The Court: How much time do you need to file a brief?

Mr. Williams: We have a little rebuttal testimony, your Honor. Very little.

The Court: Oh. All right. Then, we wait until this afternoon then. Well, we had better say 1:45.

Mr. Williams: That would be fine.

(Whereupon the Court adjourned for the noon recess.) [390]

Afternoon Session

(Whereupon the Court reconvened at 1:45 p.m. pursuant to the noon recess.)

Mr. Williams: Starting the rebuttal of the Libelant we will call Mr. Farley.

The Court: I beg your pardon?

Mr. Williams: We will call Mr. Farley for rebuttal, your Honor. Has counsel finished putting on his case in chief?

The Court: I believe the record shows the Respondent is resting.

Mr. Williams: Mr. Farley, take the stand, please.

JOHN FARLEY

the Libelant, produced as a witness in his own behalf, having been previously sworn, was examined, and testified as follows:

Direct Examination

Q. (By Mr. Williams): Mr. Farley, you were in the courtroom this morning when Captain Larson testified concerning practices aboard ship for providing crews with shore liberty while the vessel was at anchor. Did you hear that testimony?

A. Yes, sir.

Q. Yes. Is there a practice generally prevailing in the shipping industry relative to a particular type of appliance to be used to provide the crews [391] with ingress and egress while going to and returning from shore liberty while the vessel is anchored in the harbor? Is there such a practice?

A. Well, the only practice I seen——

Q. Well, first, can you answer that question “Is there a general practice?”

A. There is a practice of using the gangway.

(Testimony of John Farley.)

Q. When you say "gangway," do you mean——

A. Accommodation ladder.

Q. ——accommodation or gangway type of ladder?

A. Yes, sir.

Q. They call that a companionway sometimes?

A. They call it this Jacob's—or accommodation ladder.

Q. Yes. Now, is there a practice for using a Jacob's ladder under those circumstances?

A. Well, there is in some ports I have been in where we lay alongside of the dock maybe loaded with coal or something like that and pull away from the dock and pull out in stream.

Q. Yes?

A. And then they take the accommodation ladder up and they wait there maybe for some of the crew to come aboard and they will put the Jacob's ladder over for the men to come up on the Jacob's ladder.

Q. How many men would be returning then?

[392] You mean a few men have been left ashore?

A. The few men that has been left ashore, maybe three or four men, something like that.

Q. Mr. Farley, can you recall of any instance—you *have to sea* over thirty years, have you not?

A. About thirty years.

Q. Can you recall of any instance when a ship is anchored in a harbor where shore liberty—where a Jacob's ladder was used to provide the crew with shore liberty? Can you recall of any instance like that?

(Testimony of John Farley.)

A. I can't. I can't name no ship where I have been on where I can recall of any ship.

Q. You mean with the exception of the SS Augustin Daly?

A. That's all, the Augustin Daly, yes.

Q. Now, Mr. Farley, have you gone ashore for certain specific purposes on a Jacob's ladder when you were anchored in port?

A. Yes, sir.

Q. And, describe what were the circumstances surrounding that?

A. I was in Morocco and I was on a ship there, the Gillis, I think it was, or either that or the McCoy. We taken bunkers there.

Q. You mean, bunkers of fuel oil?

A. Fuel oil, yes, sir. And, there was no shore [393] liberty granted to the crew so the Chief asked me to take and go up on the hill and get the gauging of the tanks and bring the reading back to him. And, that's what I did. I climbed down the Jacob's ladder and I climbed up the Jacob's ladder.

Q. Yes. Now, Mr. Farley, is there any general practice among marine engineers as to when they stop working? When do they stop going to sea, is there anything that dictates when they shall do that?

A. Well, I know a lot of chief engineers and they—they're going to sea because the companies hold onto the chief engineers. You get aboard of a ship sometime there will be a chief engineer seventy years old or seventy-five, or something like

(Testimony of John Farley.)

that, on a ship and when they're here ashore—there is some of these men ashore here like Charlie—old Charlie and McMann—Joe McMann and them fellows, they're up around seventy-five or eighty years old and they stand nothing but night watches. Quite a few of them up there don't do nothing but stand night watches.

Q. Well, now, is it your testimony that when a marine engineer stops going to sea, assuming he is in sufficient physical condition, he usually stands night watches then as a form of semi-retirement?

A. He goes on that. He stands them. When he [394] comes in rotation he gets them the same as the rest of them.

Q. I see. He stands night watch for ships coming into port? A. Coming into port, yes, sir.

Mr. Williams: Well, first of all, your Honor, I would like to read into the record a portion of Libelant's exhibit relating to wages, Exhibit Number 5. On page 21 thereof it is entitled "Rates of pay and conditions for night relief engineers."

Q. That is the type of job that you referred to, is it not? A. Yes. But, for what dates?

Q. Night relief engineer.

A. What date is that on that book, though?

Q. This particular book is effective—date, June 16, 1954. I am going to read to the Court.

The Witness: Oh.

Mr. Williams: It says "When relief engineers are employed for watch at night between the hours of 4:00 p.m. and 8:00 p.m. or on Saturdays, Sun-

(Testimony of John Farley.)

days, and holidays, they shall be required to maintain an alert watch and shall perform such duties as may arise in connection with the engine department formerly performed by licensed engineers. Effective as of 12:01 a.m., June 16, 1953, the rates shall be \$2.92 per hour." And then it says [395] "Employment effective January 11, 1954."

Q. That would be the applicable rate, would it not, if you were to be working?

A. If I could be working now.

Q. Now, how many hours do you normally work as a relief engineer at night?

A. It depends on what watch you take. If you take from 5:00 o'clock at night——

Q. Yes?

A. ——to 12:00 o'clock you get seven hours, there is another man that comes down and relieves you at 12:00 o'clock at night and he stays till 8:00 o'clock in the morning, and if it is Saturday then there is another man comes down and he relieves you at 5:00 o'clock—or, 8:00 o'clock in the morning and he stays till 5:00 o'clock at night.

Q. Yes?

A. One will get nine hours and one will get eight hours and the other will get seven hours. That is, if the ship is in for that Friday and Saturday.

Q. Yes?

A. But, if it's in Sunday it will be the same way. It proceeds the same thing then till Monday morning and then there is no day engineer comes on, just the night engineer for seven or eight hours.

(Testimony of John Farley.)

Q. Well, Mr. Farley, when would you normally [396] expect to go to sea, you yourself?

A. Well, I thought even before I ever got hurt—thought I would be going to sea for another ten or twelve years because I like going to sea and I would still like to go to sea.

Q. Well, you were aged fifty-eight at the time of your injury. Ten years would be age sixty-eight, I presume. A. Well——

Q. If it were twelve years it would be age seventy. After that period of time what did you expect you would be doing?

A. That would be hard telling.

Q. Well, I mean, did you expect to be doing night relief work?

A. Yes. I'd be standing night watches if I could get them.

Q. How many do you think you would get or can you tell with any——

A. You can't tell how many nights. It just depends on how many ships are in port and how shipping is. Shipping is sometimes good and sometimes shipping is bad.

Mr. Williams: You may examine.

Cross Examination

Q. (By Mr. Krause): Do you know of any second assistant engineers that are over sixty-five years old on a job? [397]

A. Right offhand I couldn't say. But, there is engineers over sixty-five years old that is working.

Q. Second assistants?

(Testimony of John Farley.)

A. There is second assistants but I couldn't tell—you can go up—well——

Q. Well——

A. Just a minute. You can go up to the Shipping Commissioner and look in the articles that they have there, you can find out the ages of the second assistant engineers. I don't know that but I know there is engineers that come aboard that is old.

Q. Now, Mr. Farley, you know that the chief engineer sometimes is an older man on a ship?

A. Yes, sir.

Q. But, the chief engineer is usually older than the second and third assistant, isn't he?

A. Sometimes.

Q. Yes. The third assistant that was on the ship with you was this young Zaleski that testified here in this case, wasn't he?

A. Yes, sir.

Q. And, usually the second and third assistants are quite young men, aren't they?

A. Well, some of them have seven and eight issues of licenses, some of them. [398]

Q. Some of them have seven or eight issues of license?

A. Yes, sir.

Q. I asked you what was usually the case. Aren't they usually young men?

A. They're usually young men, yes, sir.

Q. That's right. Mr. Farley, was there anything there on this night that you got hurt to prevent you from seeing what was going on on the Jacob's ladder?

(Testimony of John Farley.)

A. I don't get just what you mean now.

Q. Well, was there anything to prevent you from seeing what was on the Jacob's ladder?

A. If I would have looked I could have looked up above. There is a light up above and I could have looked up above, I could maybe seen the Jacob's ladder if I would have looked up above.

Q. What prevented you from seeing a man climbing on the Jacob's ladder up toward the top of the ladder? A. What prevented what?

Q. Was there anything to prevent you from seeing what was on the ladder?

A. I didn't look at the ladder.

Q. I know it. But, what I am asking you, was there a wall between you and this ladder?

A. No, sir.

Q. There was nothing between you and the ladder, was there? [399]

A. No, sir. No, sir.

Q. So, if you had looked you would have seen the man on the ladder and what he was carrying?

A. If I would have looked I would have seen it, yes.

Mr. Krause: Very well. That's all.

Redirect Examination

Q. (By Mr. Williams): Mr. Farley, you can't say whether you would have seen what he was carrying very well, can you, unless he was carrying it in a manner in which it was exposed to you? Isn't that true?

(Testimony of John Farley.)

A. If I would have taken a look at a man—if I seen a man that had a package in his hand, or something like that, I would have seen a package. But, what is in the package, or anything like that, I wouldn't know.

Mr. Krause: No.

Q. (By Mr. Williams): Mr. Farley, when you were looking up—if you had looked up from there you would have been looking right directly into a light, wouldn't you, a floodlight shining down?

A. You would look into a light all right. I have never had any—much experience with Jacob's ladders and coming aboard and going in them so I couldn't say exactly what is what.

Q. Was there a lot of light on the launch or was most of the light—— [400]

A. There is no light down at the launch at all except a little bit of a running light. They have a red light and a blue light, little running lights. They have little lanterns. They have little lights. They have on them launches, little kerosene lamps. Sometimes they just have little white lamps on there, just a kerosene light they have on there. That's all the light I could see down below. It's kind of dark down there.

Q. Well, was it lighted down below or was it dark, in general, if you know?

A. Kind of hazy down there. Dark.

Q. The only light you had was that coming down from up above?

A. When you get up above—when you get up

(Testimony of John Farley.)

above close to the ladder the light shines right close to it—your ladder, right out towards the side of the ship. It don't point down to the bottom of the end of it into your boat or into your launch.

Mr. Williams: No further questions.

Mr. Krause: I have nothing further.

The Court: That's all, sir. You may step down.

Mr. Williams: Your Honor, I would like to move the introduction into evidence of Libellant's Exhibit Number 3, report of William J. Accurso, [401] United States Coast Guard, dated August 21, 1952.

The Court: What is the number of that?

Mr. Williams: Exhibit Number 3, your Honor.

The Court: 3. What is your position about it, Mr. Krause?

Mr. Krause: Well, your Honor, the captain's deposition was taken. This statement was not presented to him. It isn't evidence in itself. It would appear that it was supposed to be contradictory of the captain's testimony and nothing has been pointed out to him or me on that point. I do notice a conclusion, a plain conclusion as to whether there was negligence or fault on the part of anyone. I don't think that that is admissible in evidence here since that is a question the Court is going to decide and isn't a factual statement that a witness under those circumstances would be permitted to give. There is no evidence here that the captain saw this accident, therefore, every bit of it would be hearsay as far as he is concerned. That is, the

deposition indicates he did not see the accident. And, therefore, I can't understand on what basis that would be admissible here.

Mr. Williams: Your Honor, this, of course, is a Government record duly authenticated as such required by law to be made whenever there is an accident involving injury to a man. The captain [402] is the representative of the vessel and as such he is the vessel in absence of its owners and he alone has the power to make admissions or denials or statements concerning liability. I think that is well understood maritime law.

The Court: All right. Now, assuming for the sake of argument that this is a report of the master of the vessel involved which he was under obligation to make and to file. You remember, Mr. Krause, we had a very similar situation as this in the fire case in Eugene. I don't know if you heard about that or not. It is very similar to the situation of where a birth certificate is filed by doctor and he states the facts as to the time, date of birth, weight of the registry, and then he makes a statement as he did at one time that the child was either legitimate or illegitimate. It is my recollection that it was involved in my search. And that was one of the questions in the fire case. There was this situation: the fire warden was under obligation under the State law to make a report of his investigation concerning forest fires, and one of the findings very similar to this was injury due to negligence. And, that is a conclusion, that is a finding that this officer was to make from what investigation he made.

Under the State Fire Marshal's law he is to make a showing as to what damage was incurred by the fire. In [403] this case the plaintiff is suing for about a quarter of a million dollars and the defendants came in where the State forester had made the conclusion of fifty or sixty thousand dollars damage to burned-over land.

Now, I hold that that is completely analogous to this situation here. Assume for the sake of argument that the Master was under obligation by law to make such a report. In my search at that time I was convinced that was not prima-facie evidence of the conclusion therein stated. So, I will be consistent in my own mind, anyway, and I will reject the offer.

Mr. Williams: All right, your Honor.

The Court: Now, that is upon the idea that it is not a statement of fact but a conclusion.

Mr. Williams: Your Honor, I offer it for the purposes of impeachment also.

The Court: I understand. Now, I will hear you. It has been asserted by counsel that the witness in his examination was not given the opportunity to answer this.

Mr. Williams: Of course, it was not in possession of us at that time, didn't even know it was required as an exhibit.

The Court: Well, I think he was entitled to have it. Either that or at a later time. Now, let me ask you this: is there some statement other than the conclusion that we [404] have been talking about in this statement that you claim, some stated fact, in other words?

Mr. Williams: May I see it for a moment? I believe there may be. No, I think not, your Honor.

The Court: That is the whole thing?

Mr. Williams: That's the whole thing.

The Court: All right. I will stand on the ruling.

[See page 453.]

Mr. Williams: Very well, sir. That completes our rebuttal. [405]

* * * * *

[Endorsed]: Filed Jan. 14, 1957.

LIBELANT'S EXHIBIT No. 1

DEPOSITION OF MALCOM EDWARD POTTS

* * * * *

MALCOM EDWARD POTTS

produced as a witness herein on behalf of the Libelant, being first duly sworn by the Notary Public, was examined and testified as follows:

Direct Examination

Q. (By Mr. Williams): Will you state your name, please? A. Malcom Edward Potts.

Q. What is your present address?

A. 208 East 31st.

Q. What city is that in?

A. Los Angeles, California.

Q. And that is your home address?

A. Yes.

Q. And is that your permanent mailing address, also? A. Yes.

Q. By whom are you employed at the present moment?

(Deposition of Malcom Edward Potts.)

A. Lincoln-Mercury Assembly Plant.

Q. Is that in Los Angeles?

A. In Maywood.

Q. In Maywood? A. Yes.

Q. That is just on the edge of Los Angeles?

A. Yes, it is a little suburb, a suburb in the city.

Q. And how long have you been employed by them? [4] A. A year and a half.

Q. Do you know where you will be within the next six months? A. Well, I assume here.

Q. Do you have any plans to be in the vicinity of Portland, Oregon, within the next six months?

A. No, sir.

Q. Or within a hundred-mile radius of it?

A. No, sir.

Q. You expect that you will be here in Los Angeles? A. That is right.

Q. Are you married, Mr. Potts? A. Yes.

Q. And you have children? A. Yes.

Q. How many? A. Two.

Q. Were you formerly employed aboard the SS Augustin Daly? A. Yes.

Q. Do you know about when that was?

A. That was in February of 1952.

Q. That is when you became employed by them?

A. Yes.

Q. And what was your job aboard the Augustin Daly? [5] A. Assistant cook.

Q. How many times had you gone to sea previous to that voyage? A. None.

Q. That was your first voyage at sea?

(Deposition of Malcom Edward Potts.)

A. Yes.

Q. What sort of license did you have to procure in order to go to sea?

A. Seaman papers.

Q. Seaman papers?

A. Yes.

Q. Did you have to pass any particular examinations to procure them?

A. Not that I know of. No, I didn't pass any examinations.

Q. You were in the Navy previous to that?

A. Yes.

Q. But were you at sea while you were in the Navy?

A. No.

Q. All your duty was shore duty?

A. That is right.

Q. And have you shipped since that voyage?

A. No.

Q. You have not been to sea since?

A. No. [6]

Q. Did you sign articles aboard the Augustin Daly sometime in the month of February, 1952?

A. Let me see. It was either in February or the month after, I can't say exactly.

Q. Where did you sign the articles?

A. In Portland.

Q. And from where did you leave?

A. Portland.

Q. Portland, Oregon?

A. Yes.

Q. And when you left Portland, Oregon, where did you go?

A. Went down to Coos Bay. You mean on the ship?

(Deposition of Malcom Edward Potts.)

Q. Yes. Where did you then ship? A. Go?

Q. Yes.

A. You mean after, or before signing my articles?

Q. When you signed articles, was that for a foreign voyage?

A. Yes, I imagine it was, because we didn't come back to go overseas.

Q. When did you leave to go overseas, did you depart from Portland, Oregon? A. Yes.

Q. And when was that, approximately? [7]

A. I can't remember exactly when it was.

Q. Would it be either in late February or early March?

A. Yes, either one. I don't know. It was either late February or early March.

Q. And where did you go when you left?

A. To go overseas?

Q. Yes. A. We went to Sasebo.

Q. You went to Sasebo? A. Yes.

Q. Japan? A. Japan, yes.

Q. And about how many days were you in going over there?

A. I would say about 27, 28 days, something like that. It was almost a month.

Q. Do you know the date of your arrival in Sasebo, offhand?

A. I believe it was April 2nd.

Q. And that was the first foreign port that you went to? A. Yes.

Q. And do you recall whether or not you had shore liberty at that port? A. Yes. [8]

(Deposition of Malcom Edward Potts.)

Q. Did you go ashore? A. Yes.

Q. What means of ingress and egress was there from the vessel, that is, what means of leaving the vessel was supplied by the vessel for crew members?

A. Well, you mean insofar as the landing, or as to the boat?

Q. Yes, in what form of appliance or device which was used to permit crew members to get off the boat onto a launch to go ashore?

A. On that particular day we used a Jacob's ladder.

Q. A Jacob's ladder? A. Yes.

Q. That is also known as a pilot's ladder, is it not?

A. I don't know. I just know it as a Jacob's ladder. I know the pilots use it.

Q. What date did you go ashore, if you know?

A. Well, I thought I went ashore—I am not sure about what date it was that we went ashore.

Q. Do you recall an injury that occurred to Mr. John Farley, who was the second assistant engineer aboard the SS Augustin Daly? A. Yes.

Q. With relation to that injury, what date did you go to shore? [9]

A. It was the first night that we went to go ashore.

Q. I mean in relation to the day that Mr. Farley was injured. Did you go ashore several times before that, or is that the only time you went ashore?

A. That is the only time I went ashore.

Q. And you don't know what date that was?

(Deposition of Malcom Edward Potts.)

A. No. I can't think offhand what date it was.

Mr. Williams: I believe Counsel will stipulate with me that Mr. Farley went ashore on the 5th and was injured shortly after midnight on the 6th. Is that correct, Counsel?

Mr. Kennedy: Yes, shortly after midnight of the 5th, if I remember correctly; I would be willing to stipulate that the accident happened approximately on or about 0040 April 6, 1952, which would be just shortly after midnight on April 5th.

Mr. Williams: So it would be on April 6th.

Mr. Kennedy: Yes.

Mr. Williams: That is 40 minutes after midnight, on April 6th.

Mr. Kennedy: Yes. I would be willing to stipulate that it was on or about that time.

Q. (By Mr. Williams): Now, that is the time that you went ashore and returned, is it not?

A. Yes.

Q. And that date has been established to be April 5th, [10] and April 6th when you returned?

Will you describe, if you can remember, how the Jacob's ladder that you refer to was fixed to the vessel?

A. Well, from what I can remember, I thought it was fixed on the main deck, and outside of that, all I know, at least I figured it was secured to the main deck, though I could be wrong about that.

Q. Your recollection of that matter is not too clear? A. No.

Q. Is that your answer?

(Deposition of Malcom Edward Potts.)

A. That is it. It is not too clear.

Q. And was that the only means of leaving the ship which was employed on that date?

A. Yes.

Q. That was available to you? A. Yes.

Q. Was an accommodation ladder used to provide ingress and egress on that date? A. No.

Q. It was not? A. No.

Q. It was not in use?

A. It was not in use, no.

Q. Was it in use insofar as you know at the harbor of Sasebo, Japan, at any time during that particular time [11] that you referred to?

A. I can't remember.

Q. You cannot recall? A. No.

Q. Do you know Mr. John Farley, second assistant engineer, aboard the *Augustin Daly*? Would you recognize him?

A. I believe I would.

Q. You know who he is? A. Yes.

Q. You had met him? A. Yes.

Q. Previous to this time? A. Yes.

Q. And when you went ashore, that was on about what time of the day, on April 5th?

A. I would say about 6:00 o'clock, around 6:00 o'clock.

Q. Was it in the morning or in the afternoon?

A. Afternoon.

Q. In the afternoon. And did you go down the Jacob's ladder to get in the launch?

A. Yes, sir.

(Deposition of Malcom Edward Potts.)

Q. Is that how you got ashore? A. Yes.

Q. And how many other men from the ship's crew went ashore at that time, if you know, approximately? [12]

A. I would say about 10, 15 men went ashore with us.

Q. Was Mr. Farley among those men, if you know, if you remember?

A. I am not certain. I don't remember.

Q. Then you got on the launch. Was that provided by the ship?

A. From what I understand, yes.

Q. And that launch took you ashore?

A. Yes.

Q. And did you arrive at a dock ashore?

A. Yes.

Q. And would you then state what you did after that?

A. Well, after that we went into a bar there on the waterfront.

Q. When you say "we," whom do you mean, Mr. Potts?

A. A friend of mine that were in the ship there, a couple of fellows that I ran around with on the ship, and we went into the bar and had a couple of drinks.

Q. Which bar was that?

A. You mean the name of the bar?

Q. No, no. Where was it?

A. Oh, on the dock.

Q. Right where the dock was?

(Deposition of Malcom Edward Potts.)

A. Yes, where we come off the ship and launch, and walked up a few paces and the bar was there, and I had a few [13] drinks there. And then we left there and went and got a haircut; after the haircut walked around a bit, and then went up to some houses, ladies' houses, women's houses, and after that we left and went back to the ship; which then the accident occurred.

Q. Now, during the time you were ashore, when you were in the first bar, Mr. Potts, how many drinks would you say you had?

A. Well, I'll say that I had a couple of whiskies, glasses of whisky there, and maybe about one or two bottles of beer.

Q. Incidentally, how old are you, Mr. Potts?

A. Thirty.

Q. You were twenty-eight or twenty-seven at that time?

A. Let me see. I must have been twenty-eight. I just turned twenty-eight.

Q. And did you have anything else to drink after that time, and before you got on the launch to go back to the ship?

A. Yes.

Q. What did you have to drink?

A. More whisky and beer.

Q. At other bars?

A. No, not at any other bars.

Q. Did you buy a bottle? [14]

A. Yes.

Q. And do you know about how many drinks you took out of the bottle, roughly?

A. I would say roughly a couple.

(Deposition of Malcom Edward Potts.)

Q. And then you returned to the dock where the launch was to pick you up? A. Yes.

Q. And about how many men went back at that time?

A. Oh, I don't know exactly how many men. All I remember seeing was just the ones that were there at the accident. Now, whether there were any more near there or not, I couldn't say for sure.

Q. Would you say about the same number of men who went in came back at that time?

A. No.

Mr. Kennedy: I object to that on the ground it is leading.

Mr. Williams: Very well. I will withdraw the question.

Q. You have stated that as far as you know, approximately 10 or 15 men, you think, went ashore in the launch. A. Yes.

Q. Can you tell me approximately how many men came back in the launch, to the best of your recollection? Approximately.

A. Like I said, I only remember the ones that were [15] there at the time of the accident. Now, how many were in the boat, I can't recall.

Q. Was Mr. Farley among those on the boat returning? By Mr. Farley I mean the second assistant engineer on the Augustin Daly. A. Yes.

Q. Will you describe the launch in which you returned to the ship, as to how long it was, approximately?

A. I would say approximately 25 feet.

(Deposition of Malcom Edward Potts.)

Q. And about how wide would you say the launch was?

A. Oh, about 10 or 12 feet wide, I guess, something like that.

Q. And was it an open cockpit, or was it covered?

A. Well, where we was, was covered.

Q. Then, the passengers, the crew members, rode in a covered portion? A. Yes.

Q. Inside of a cabin of some sort?

A. Yes, it was covered over.

Q. Was this cabin open on one or more sides?

A. It was open on each end.

Q. On each end. And about how long would you say the cabin was?

A. Oh, let's see. It was a little shorter; about eight or nine feet, I guess, something like that. [16]

Q. And did you sit down inside there on benches or something like that?

A. Yes, sat on benches inside there.

Q. About what time did you leave Sasebo, the dock there, to return to the ship, would you say?

A. Gee, I don't know. Let's see. I thought that the boat was scheduled to go back around 11 o'clock, and I thought we had only sat there a short time. Of course, it could have been longer than I figured, and it only takes a very few minutes to get out there. So I don't know exactly what time it was we left there.

Q. During your trip on the boat, on the launch from the shore to the ship, will you describe what

(Deposition of Malcom Edward Potts.)

your condition was with relation to your sobriety or soberness; were you sober or were you intoxicated, and if so, describe it.

A. Well, no, I wouldn't say that I was very sober, not absolutely sober, although I wasn't overly drunk, either. I mean I had had a few drinks, and I knew what I was doing. I was aware of myself at that time.

Q. Were you stumbling or falling down?

A. No, sir.

Q. Were you singing or making a great deal of noise on the way back? A. No, sir.

Q. Were the men with you doing that? [17]

A. Yes, if I can remember correctly, but I can't remember exactly whether he was or not.

Q. Whether somebody was singing?

A. Yes.

Q. Or whether what?

A. Or whether they were making a loud noise. I know it wasn't dead quiet.

Q. (By Mr. Kennedy): You know it wasn't dead quiet, is that what you said? A. Yes.

Q. (By Mr. Williams): And you were with some friends, you were grouped together, is that correct, on the launch going back?

A. Well, not exactly a group. I mean everybody was just sitting in it.

Q. Where were you sitting on the launch?

A. I am not sure about where I was sitting, but I believe, I think I was sitting forward of the boat.

Q. Were you sitting next to Mr. Farley, or do

(Deposition of Malcom Edward Potts.)

you know? A. I don't know.

Q. You don't know where he sat with relation to you? A. No, sir.

Q. Did he talk to you on the way back?

A. Not that I know of, no.

Q. And when you arrived at the side of the ship, did [18] the launch stop there close to the position where the Jacob's ladder was fixed? A. Yes.

Q. And what did you do at that time?

A. I went out and I believe—I am not sure about this, but my friend went up the ladder first and then I believe I proceeded to go up the ladder.

Q. You were the second man up the ladder?

A. Yes, I was the second man up the ladder.

Q. How did you leave the launch? I mean, you were in an enclosure, you said? A. Yes.

Q. In sort of a cabin that was open on the two ends? A. Yes.

Q. Did you go out the front end or from the back end? A. I went out the front end.

Q. And was there a deck on the forward of *the* this launch? A. Yes.

Q. On the bow of the launch? A. Yes.

Q. And you stepped from there onto the Jacob's ladder? A. Yes.

Q. About how far would the launch have been from the Jacob's ladder? [19]

A. Oh, it would have been right up on it, I imagine.

Q. Within a foot? A. Yes, yes.

Q. And did other men come out there with you,

(Deposition of Malcom Edward Potts.)

at the time you came out to get on the Jacob's ladder? A. Yes, I believe they did.

Q. Or did they stay inside, or do you know?

A. Well, I believe we filed out one by one, because it was too small for too many to come out all at once. That is the reason why I say I believe I was the second one up the ladder. I believe my friend went out first, and then I went out, and we went up the ladder then.

Q. And would you say that you were feeling good at this time?

A. By "feeling good," what do you refer to?

Q. I mean to say, were you, by reason of having had some alcoholic drink, feeling somewhat elated?

Mr. Kennedy: I object to that on the ground it is leading.

Mr. Williams: That is all right. I will withdraw the question.

Q. When you started up the Jacob's ladder, was there anything you were carrying, were you carrying anything? A. Yes.

Q. What were you carrying? [20]

A. I had two bottles that I was carrying.

Q. Were those your own?

A. No, they were not mine. They were my friend's.

Q. You were taking them aboard for your friend? A. Yes.

Q. Is that what you were doing? A. Yes.

Q. And how were you carrying those bottles, were they wrapped in a sack? A. No.

(Deposition of Malcom Edward Potts.)

Q. Or were they free, or what?

A. They were free, and if I can remember correctly, I had one in my right hand and one under my left shoulder—under my left arm.

Q. Holding it under your left arm?

A. Yes.

Q. So that when you went up the Jacob's ladder, which hand were you holding onto the Jacob's ladder with?

A. With both of them. Of course, I was using both hands going up and, well, with one bottle, it may have been a little awkward.

Mr. Kennedy: Will you read the question and answer?

(Record read by the Notary.)

Mr. Kennedy: Very well.

Mr. Williams: I will clarify it. [21]

Mr. Kennedy: Go ahead.

Q. (By Mr. Williams): Mr. Potts, you were holding a bottle how, by the neck? A. Yes.

Q. In your right hand, is that correct?

A. Yes, yes.

Q. And you weren't holding onto the Jacob's ladder with your fingers, then, is that correct, as you went up, with the fingers of your right hand?

A. Yes, I had the bottle and was gripping it, the bottle like this (illustrating), and sort of both, going up like that. Maybe I used two or three fingers going up.

Q. Of your right hand? A. Yes.

Q. And is it correct your left hand was free,

(Deposition of Malcom Edward Potts.)

excepting you had a bottle? A. A bottle.

Q. Under your left arm?

A. That is right.

Q. And will you describe what happened as you went up the Jacob's ladder?

A. Well, I just went up the Jacob's ladder and when I got to the top, I went over, went to go over the rail there, or I was on top of the rail, and then instead of going forward I went backwards. [22]

Q. You simply fell?

A. Fell. That is all that I know about it.

Q. Did you slip on anything, or did you just fall?

A. I don't remember whether I slipped or whether I fell. All I know I was just by myself floating in air. That was all there was to it.

Q. Do you know how far you fell?

A. I would say about like off of a two-story building.

Q. By that height, what do you mean to indicate, you mean 15, 20, 25 feet, or about how far?

A. Twenty, twenty-five feet, I imagine, something like that.

Q. And on what did you land?

A. Well, I will say I landed on Mr. Farley, at least the way he was groaning and everything, I expect I landed on him.

Q. Did you land just on Mr. Farley or partly on other men also?

A. Well, as far as I know I landed on Mr. Farley, but the other men say I hit them, too.

(Deposition of Malcom Edward Potts.)

Mr. Kennedy: I move to strike that last portion. Is that agreeable?

Mr. Williams: You just put your motion in.

Mr. Kennedy: All right, I move to strike the last portion of the answer where he states that he heard or was [23] told he fell on other men, also, on the grounds that it is completely immaterial in this case and is not responsive to the question.

Q. (By Mr. Williams): Mr. Potts, what happened to the bottles that were in your hands, one in the right hand and one under your left arm, what happened to them as you fell?

A. Well, they fell to the deck below.

Q. To the deck of the launch?

A. Yes, and one of them busted.

Q. On the deck of the launch?

A. I guess so. All I can say is that it busted. I don't know whether it fell on anyone or not.

Q. What happened to the other one?

A. The other one, I still let go——

Q. Did you retrieve that? A. Yes.

Q. And then what did you do?

A. Proceeded to go up the Jacob's ladder.

Q. Did you take that bottle with you?

A. Yes.

Q. When you fell on the launch and fell, do you know that you fell on top of a man, are you sure of that? A. No, I am not sure.

Q. You don't know whether you hit the deck or hit a man or not, of your knowledge, do you? [24]

A. Of my own knowledge, no, I don't.

(Deposition of Malcom Edward Potts.)

Q. After you landed, did you remain in the same position up until the time you got up, that is to say, did you land at one point and then roll or fall someplace else, after you landed, if you know?

A. No.

Q. Or did you stay in the same place?

A. I believe I stayed in the same place, just got up from there.

Q. And when you got up from there, about how far back did you have to walk to get on the Jacob's ladder?

A. About two or three steps.

Q. Mr. Potts, do you recall whether or not there was any light fixed onto the vessel near, then, where the Jacob's ladder was fastened on?

A. Yes, there was light.

Q. There was some sort of light. Do you know what kind of light it was?

A. I am not sure. I think it was a big floodlight and then I think they had lights at the top of the mast and over one of the hatches that they had on there.

Q. And the lights you have described, did any of them shine down over the side of the ship, or were they mostly on the surface of the ship, on the deck?

A. They shined down, because when we got to the ship's [25] side, there was plenty of light there over the side of the ship.

Q. Could you see the Jacob's ladder as you were going up there, I mean could you see the steps?

A. Yes.

(Deposition of Malcom Edward Potts.)

Q. You had no difficulty in seeing the lights?

A. No, no difficulty in seeing the lights, no.

Q. Mr. Potts, did you receive any instructions from the captain of this vessel, the Augustin Daly, or from any other officer aboard the Augustin Daly, as to how to go up and down a Jacob's ladder?

A. No.

Q. During the voyage? A. No.

Q. You did not. This was the first port that the ship was in, from the time you left the United States? A. Yes.

Q. Now, you said that you had gone on this ship down to Coos Bay originally, is that correct?

A. Yes.

Q. And then returned to Portland?

A. Yes.

Q. Was the Jacob's ladder used, then, as a means of ingress and egress? A. No, sir. [26]

Q. Were you alongside a dock or were you using some other method?

A. No. We were alongside of the dock all the time.

Q. Then, this was the first time that the Jacob's ladder was used in respect to this vessel?

A. Yes.

Q. Was that the first time that you ever used a Jacob's ladder? A. Yes, it is.

Q. Mr. Potts, if you know, will you please state why you fell, if you know?

A. I don't know why I fell. I can't understand why I fell at all.

(Deposition of Malcom Edward Potts.)

Q. Did the fact that you had been drinking previously have a bearing on it?

Mr. Kennedy: Objected to on the ground that it is leading.

Mr. Williams: I will withdraw the question.

Q. State whether or not the fact that you had been drinking had a bearing on your fall from the Jacob's ladder.

Mr. Kennedy: I object to that, also, on the ground it is leading and also on the grounds that the witness has answered the question, and on the further ground that counsel is impeaching his own witness.

Mr. Williams: Your objection is in the record. [27] Will you please answer the question.

Mr. Kennedy: Read it back to him, please.

Mr. Williams: Read it back to him.

(Pending question read by the Notary.)

The Witness: I don't think so.

Q. (By Mr. Williams): You do not think so?

A. No.

Q. State whether or not your inexperience with the Jacob's ladder had a bearing on your fall from the Jacob's ladder at the time and place you have mentioned.

Mr. Kennedy: Just a moment. Will you read the question, please.

(Pending question read by the Notary.)

Mr. Kennedy: Objected to on the ground that it is leading and also on the grounds that the question

(Deposition of Malcom Edward Potts.)

has been previously answered and counsel is impeaching his own witness.

Mr. Williams: Now, will you please answer the question?

Read it to him.

Mr. Kennedy: Read it to him.

(Pending question read by the Notary.)

The Witness: No.

Q. (By Mr. Williams): That had no bearing on it? A. No bearing on it.

Q. Then, you are unable to state any factor or any particular cause of your fall? [28]

A. That is right.

Q. Mr. Potts, I believe you testified that when you first arrived at Sasebo you went to a small bar that was near the dock there, did you not?

A. Yes.

Q. And you said that while you were there, you had a couple of whiskies? A. Yes.

Q. Do you mean one-ounce shots, or about what size, how much do you think?

A. About a regular one-ounce shot, maybe, yes, a regular whisky glass.

Q. You bought that from the bar?

A. Yes.

Q. And you had also a couple of beers?

A. Probably. I won't say a couple, but I know I had one beer, because you get the large bottles, see, and I usually took a couple of bottles of those.

Q. How large bottles were those, pints or quarts, or in between?

(Deposition of Malcom Edward Potts.)

A. What size are our beer bottles? They are 12 ounces. They are a little larger than 12 ounces.

Q. After that did you buy a bottle, after that, for yourself? A. No, I didn't. [29]

Q. Did you have one with you? A. Yes.

Q. Did your friend buy it? A. Yes.

Q. And you took some drinks out of that, is that right?

Mr. Kennedy: That is objected to on the ground that that is leading.

Mr. Williams: He has already said that he did.

Q. Did you have any drinks out of the bottle that your friend bought? A. Yes.

Q. About how many do you think you had while you were in the town of Sasebo?

A. While I was in the town of Sasebo, I may have had one. I may have—I don't remember drinking any of it, though. I may have, but I can't remember.

Q. Did you stop in any other bar or at any other place where you bought more liquor? A. No.

Q. And when you returned to the dock, did you have a drink out of the bottle that you referred to there?

A. No. We didn't have the bottle there.

Q. When you were at the dock.

A. Yes. We didn't have it. We left it at the house [30] with the other fellow.

Q. When you got on the launch, did you have any drinks then?

(Deposition of Malcom Edward Potts.)

A. I may—I am not sure whether I had drinks then or not.

Q. Mr. Potts, at the time of your voyage on the *Augustin Daly*, did you drink fairly regularly or infrequently, or what were your drinking habits?

A. Infrequently, I would say.

Q. Did you normally have as much to drink when you drank as you did on this particular occasion? A. I had more.

Q. You had more on this occasion than you did ordinarily?

A. No. I had more after that than I did on this occasion.

Q. Oh, I see. But up until that time——

A. Yes.

Q. ——did you normally, when you drank, drink as much as you did on this occasion?

A. I did not drink very much on that——

Q. Before then. A. Before then, no.

Mr. Kennedy: Just a minute. I am sorry, but I think the witness' words are being turned a little bit. I understood [31] him to answer that on other occasions he drank more than on this particular occasion, and that also, as far as any general or usual occurrence, that on other occasions he would normally drink more than he did on this occasion.

Mr. Williams: Counsel, I think you will find from the reporter's notes that the notes will indicate that his testimony was that subsequent to this time he did drink more, but not prior thereto.

(Deposition of Malcom Edward Potts.)

Will you please read back his answer so we can check that up, Mr. Reporter?

(Record read by the Notary.)

Mr. Kennedy: I don't think that is right. I don't think that is what his questions led up to. Go ahead. It doesn't matter. I can clear it up on cross examination, but I think his testimony is to the contrary.

Q. (By Mr. Williams): Mr. Potts, is it your testimony that prior to the occasion we have reference to, that when you drank you did not drink as much as you did, then, is that your testimony?

A. That is right.

Q. Up until that time? A. Yes.

Q. Have you seen Mr. Farley since the accident?

A. No.

Q. Did you have a conversation with the captain [32] following the accident? A. No.

Q. With any of the other officers or crew following the accident? A. No, sir.

Q. Relative to Mr. Farley's injury, I mean.

A. No, sir.

Q. Have you, since the date of the accident, had conversations with representatives of the respondent in this case, the United States of America, with regard to Mr. Farley's accident? A. Yes.

Q. With whom?

A. Let's see, an attorney came and they took a statement as to the accident.

Q. Was he an attorney representing the respondent, the United States of America, in this matter, if you know? A. I don't know.

(Deposition of Malcom Edward Potts.)

Q. Was he representing Mr. Farley, or did he tell you?

A. I believe he was for the United States, but when he first came to me, I did not know who he was representing.

Q. Didn't he disclose whom he was representing?

A. No. He may have, but maybe I have forgotten. He just came and told me what the situation was, and that he come down to get my statement on what had happened, and that [33] was about all.

Q. Was that here in Los Angeles?

A. Yes.

Q. Have you been contacted since that time by other representatives of the respondent, United States of America?

A. Only contacted me this morning.

Q. The contact this morning, that was by myself as attorney for Mr. Farley, was it not, Mr. Potts?

A. No, sir.

Mr. Kennedy: I talked to you this morning?

The Witness: Yes.

Mr. Kennedy: Isn't that right, Mr. Potts?

The Witness: Yes.

Q. (By Mr. Williams): Mr. Kennedy talked to you this morning? A. Yes.

Q. About what time?

A. Well, this—do you know the fellow's name? Becker.

Mr. Kennedy: Oh, Mr. Richardson, I believe, from Mr. Becker's office. He contacted you this

(Deposition of Malcom Edward Potts.)

morning. And you don't mind if I testify. I can testify what it was.

Mr. Williams: No. That is all right.

Mr. Kennedy: He contacted Mr. Potts this morning, at my request. [34]

Mr. Williams: At what time?

Mr. Kennedy: I don't know at what time. We had breakfast together, with Mr. Richardson, with Mr. Potts and myself, and at that time we discussed the accident, and I assume that thereafter you had some conversation with him.

Q. (By Mr. Williams): When did I call you, contact you, Mr. Potts? A. About 11:30.

Q. This morning? A. Yes.

Q. And I discussed the accident with you, also?

A. Yes.

Q. Did I not? A. Yes.

Q. Who is Mr. Richardson, Mr. Potts, if you know? A. He is a lawyer.

Q. Here in Los Angeles? A. Yes.

Mr. Kennedy: I can clarify that.

Mr. Williams: Well, I don't know.

Mr. Kennedy: I can clarify that. Mr. Richardson isn't a lawyer. He is a private investigator who works, I think, for Mr. Lillick's office down here, and we called down here so that I could arrange to talk with Mr. Potts, left specific instructions that no one, no investigator or [35] no other person would discuss this accident in any particular with Mr. Potts, and I thereafter discussed the facts of

(Deposition of Malcom Edward Potts.)

the accident with him. Now, if you want to ask Mr. Potts what I told him, go right ahead.

Q. (By Mr. Williams): What time were you contacted this morning, Mr. Potts, by Mr. Kennedy and Mr. Richardson?

A. Well, Mr. Kennedy called this morning about eight, I believe it was.

Mr. Kennedy: Excuse me. You do not mean Mr. Kennedy. You mean Mr. Richardson?

The Witness: I am sorry. Not Mr. Kennedy. Mr. Richardson, yes; and he picked me up about 8:30.

(Record read by the Notary.)

Mr. Kennedy: Yes, Mr. Richardson "picked me up about 8:30." Off the record.

(Discussion off the record.)

Mr. Williams: That is all, I believe.

Cross Examination

Q. (By Mr. Kennedy): Mr. Potts, you testified that you were in the Navy during the war.

A. Yes.

Q. How long were you in the Navy?

A. Three years.

Q. Where were you generally stationed? [36]

A. Boston.

Q. You were stationed there almost all the time?

A. Yes.

Q. Did you go through boot training?

A. Yes.

Q. How long were you in boot training?

A. Eight weeks.

(Deposition of Malcom Edward Potts.)

Q. Now, I believe you also testified that before sailing, of course you obtained your sailing papers?

A. Yes.

Q. Did you obtain those through the Coast Guard? A. Yes.

Q. Did you also have to apply through any union? A. Yes.

Q. How did you actually get aboard that ship? Did you contact the steamship company or did you contact the union? A. The union.

Q. And did the union send you aboard the ship?

A. Yes.

Q. What were you sailing as, as a permit man?

A. Yes.

Q. Now, I don't know if I completely understood this. I think you might have answered it before:

Was it your testimony that it was your best [37] recollection that you went ashore about six at night before the accident? A. Yes.

Q. To the best of your recollection, it was about 6:00 o'clock, is that right? A. Yes.

Q. Then, I take it also by your direct examination you don't know for sure whether an accommodation ladder was used or not at other times while you were in the port, is that right, or am I wrong on that?

A. Well, I remember one occasion it was used.

Q. You mean at Sasebo?

A. No, not as Sasebo.

Q. I mean at Sasebo. A. Oh, no.

(Deposition of Malcom Edward Potts.)

Q. You just don't know, do you?

A. No, I don't remember.

Q. Did you go ashore with a group of friends of yours? A. Yes, two more friends of mine.

Q. Three of you altogether? A. Yes.

Q. Who were the two friends?

A. S. L. Johnson.

Q. And who was the other one?

A. The other one was—let's see, what was his name? I think it was John Goodry, that is his [38] last name, but I think his first name was John. They called him Goodry.

Q. G-o-o-d-r-y? A. I guess so.

Q. (By Mr. Kennedy): Have you any idea about what time you arrived at the dock, Mr. Potts?

A. Oh, I would say about maybe five or ten minutes later, after we left the ship.

Q. Now, this launch, do you know whose launch it was that had been used?

A. No. I don't know. It was a Japanese launch, but from what I understand, on which I could be wrong——

Mr. Kennedy: Well, excuse me, Mr. Potts.

The Witness: Yes.

Mr. Kennedy: If you know something from what somebody else told you, that is not admissible in a matter like this.

The Witness: I don't know whose launch it was, then.

Q. (By Mr. Kennedy): And I take it you don't

(Deposition of Malcom Edward Potts.)

know what arrangements were made by the company—— A. No.

Q. ——nor by anybody else, insofar as the launch was concerned? A. No.

Q. Now, I believe you also testified that you stopped at a little bar there just on the dock or close by the dock? [39] A. That is right.

Q. About what time did you leave there, to the best of your recollection?

A. Oh, about an hour or so, an hour and a half after we arrived in there.

Q. About what time would you say that took you up to, approximately?

A. Oh, I would say around 7:30 or 8:00 o'clock.

Q. What type of beer was that? Was that American beer or Japanese beer? A. Japanese beer.

Q. And what about the whisky?

A. The same.

Q. Japanese whisky? A. Japanese whisky.

Q. And from there, Mr. Potts, did you testify that you went uptown to get a haircut?

A. Yes.

Q. Were these other two fellows with you at that time? A. Yes.

Q. And did you get your haircut? A. Yes.

Q. About what time, approximately, would it be after you had finished getting your haircuts?

A. Oh, let me see; about 8:30 or 9:00 o'clock [40] maybe a little longer.

Q. Would you say maybe a little later?

A. Yes, maybe a little later, not much.

(Deposition of Malcom Edward Potts.)

Q. I take it you are not sure about these times.

A. No, sir.

Q. They are just your general recollection?

A. That is right.

Q. And after that, did you walk around town for a bit?

A. Yes.

Q. All three of you?

A. Yes.

Q. How long did you walk around town?

A. Oh, maybe half an hour to an hour, I would say.

Q. What were you doing, just general sight-seeing?

A. Yes, just general sight-seeing, looking around.

Q. Well, from there I believe you testified that you went up to some girls' house.

A. That is right.

Q. Were all three of you up there?

A. Yes.

Q. Did you have a bottle of whisky with you at that time?

A. Yes.

Q. Did you buy that whisky?

A. No. [41]

Q. Did you become separated at the girls' house?

A. Yes.

Q. Were you with the whisky?

A. No.

Q. Or did your friends have the whisky?

A. No; I didn't have the whisky. They had the whisky.

Q. Incidentally, Mr. Potts, did you have to be back aboard the ship in the morning?

A. No, I didn't.

Q. And why was that?

(Deposition of Malcom Edward Potts.)

A. Well, it was an incident that happened, that started in Portland. You see, our chief cook—the steward has the say-so of the liberty, so he left it up to the chief cook as to the liberty that the three cooks would have, so in Portland it seems as though the chief cook and the second cook were going ashore off and on all the time while I was working, so during the voyage over, I put up a squawk about it and the chief cook said that I could have the **first** night or the first day off when we reached port.

Q. Well, did you have the following day off, then? A. Yes.

Q. In other words, you didn't have to report for work—— A. In the morning.

Q. In the morning? A. That is right. [42]

Q. Did you have to come back aboard on that 12:00 o'clock boat? A. No.

Q. You could have come back in the morning?

A. That is right.

Q. Now, about when did you leave this house that you testified to, to the best of your recollection?

A. To the best of my knowledge, I will say it was close around eleven.

Q. Did your other two friends leave with you?

A. No. Only one.

Q. Only one? A. Yes.

Q. Did he have duty the next day?

A. Yes.

Q. Let me ask you this, Mr. Potts: Did you want to go back aboard the ship at midnight?

(Deposition of Malcom Edward Potts.)

A. Well, it was more or less immaterial, because I didn't have to go back if I didn't want to.

Q. But your friend did have to go back, is that right?

A. Well, he didn't have to go back that night. He could have waited and chartered a boat in the morning and went out on it.

Q. Did he have duty in the morning?

A. Yes. [43]

Q. What time would he have to be on watch?

A. Six o'clock.

Q. What was the condition of your friend at the time you left this house, as far as his sobriety or relative to intoxication?

A. Well, I would say that he was a bit intoxicated.

Q. He was a bit intoxicated? A. Yes.

Mr. Williams: Just a moment. I wish you would indicate by "friend" who you mean, because he indicated two men.

The Witness: Oh, S. L. Johnson.

Q. (By Mr. Kennedy): Mr. Johnson was the one who left with you? A. Yes.

Q. And you say he was intoxicated?

A. Yes.

Q. Well, of course, intoxication is a relative thing. Was he singing or stumbling or anything like that?

A. Well, no. He wasn't singing or stumbling or anything. But when you are with a fellow, you know just about how much they can take.

(Deposition of Malcom Edward Potts.)

Q. Well, would you say that he had about reached his limit or not?

A. Well, no. He could go a few more, I guess.

Q. I see. Now, I believe you testified that [44] you then went back down to the dock.

A. Yes.

Q. Is that right? A. That is right.

Q. And did your friend buy some whisky there?

A. Yes.

Q. Was it your friend who bought the two bottles of whisky? A. Yes.

Mr. Williams: When you say "friend," you mean S. L. Johnson?

The Witness: Yes.

Q. (By Mr. Kennedy): Then, did both of you then board the boat? A. Yes.

Q. The launch, rather? A. Yes.

Q. And how long were you aboard the launch before it actually sailed for the vessel?

A. I don't know just how long it was. Ten, fifteen minutes. Maybe more. I couldn't actually say how long it was.

Q. And on the way back, was Mr. Johnson doing any singing or being a little bit playful, or anything along that line? [45]

A. I can't remember whether he was being playful or not on that particular trip.

Q. Why do you say on that particular trip, Mr. Potts?

A. Well, I can remember other occasions where

(Deposition of Malcom Edward Potts.)

he might have been playful, you know, talking with the men, drinking and stuff like that.

Q. Then, he does under certain circumstances get into sort of a playful spirit? A. Yes.

Q. But I take it you can't remember specifically in this case whether he was singing or being particularly playful, or do you?

A. No, I don't remember.

Q. Now, Mr. Potts, you also testified about the dimensions of the launch. Are you very certain about those, or is that just sort of your general recollection?

A. Just my general recollection. I am not certain about it at all.

Q. I don't know if I quite understood. Does that launch have what you would call a midship house?

A. Well, there are launches—at least that launch was built, like I say, 25 feet, and the cabin where the men sit was sort of oblong around that way.

Q. Well, did that go back on the stern?

A. Yes, it went clear to the stern. It didn't [46] cover the stern. It would cut off, say about, oh, about four foot from the stern of the ship, something like that.

Q. It just provided a covering, is that right?

A. No. It didn't provide a covering back there from four foot up to—maybe it had a little more bow to it than the stern.

Q. Now, I also recall—I am not sure whether I got that testimony correctly or not, but I believe on the tail end of one of your answers you said it

(Deposition of Malcom Edward Potts.)

was not dead quiet on the boat? Am I right about that, Mr. Williams? A. Yes, I will say that.

Mr. Williams: I believe he said it was not dead quiet on the boat.

Q. (By Mr. Kennedy): It was not dead quiet?

A. Yes, it was not dead quiet.

Q. It was not dead quiet? A. Yes.

Q. Now, do you know where you were sitting on the boat, Mr. Potts?

A. I can't say for sure where I was sitting.

Q. I believe you testified that you thought that you were sitting forward. A. Yes.

Q. I mean, do you know, or is your recollection very clear about where you were sitting? [47]

A. No. It is not clear.

Q. I realize that this accident happened quite a while ago.

A. Yes. It is not clear at all.

Q. Were you with Mr. Johnson all the time?

A. Yes.

Q. Coming back in the boat? A. Yes.

Q. Were you carrying the whisky bottle at that time? A. Yes. You mean on the launch?

Q. While you were on the launch, or do you remember?

A. I don't remember whether I had it, then, or not.

Q. Was there any reason, Mr. Potts, why you carried those bottles of whisky up the Jacob's ladder?

A. Yes. We debated there about going up the

(Deposition of Malcom Edward Potts.)

ladder, he and I and I thought I was in better condition to carry it than he was.

Q. He was a little high? A. Yes.

Q. But they were his bottles? A. Yes.

Q. Now, I am not sure if my recollection is fairly correct on this or not:

Did you testify that you had one of the bottles in your right hand? [48] A. Yes.

Q. And one under your left arm? A. Yes.

Q. Did you have part of your right hand free to grasp the Jacob's ladder?

A. Not my hand. My fingers.

Q. Your fingers? A. Yes.

Q. You were holding the bottle with some of your fingers? A. Yes.

Q. And grasping the Jacob's ladder?

A. With the others.

Q. Your free fingers? A. That is right.

Q. Did you have any particular difficulty in climbing the ladder?

A. No. It didn't seem like any difficulty to me.

Q. How tall are you, Mr. Potts?

A. About five, nine and a half.

Q. And what do you weigh?

A. About 155, 156.

Q. Did you ever engage in any athletics?

A. I did. I do now, yes, from time to time.

Q. What do you do? [49]

A. Well, now, I play baseball and occasionally a little football with the kids, or something like that.

Q. Any sports while you were in school?

(Deposition of Malcom Edward Potts.)

A. Yes, yes. I ran track while I was in school.

Q. Now, where were you on the Jacob's ladder, Mr. Potts, if you remember, when you fell?

A. I was at the top.

Q. Did you have a leg over?

A. I can't remember whether I had a leg over or whether I was standing on top of the rail.

Q. Is there some possibility you might have been standing up and going over? A. Yes.

Q. Now, I believe you testified that you just fell off into air and that you may have slipped or just fell, something to that effect? A. Yes.

Q. Now, do you recall that you slipped, Mr. Potts, or do you have any recollection about that?

A. I don't have any recollection of it.

Q. Well, what I am getting at is, was there any foreign substance like a banana peel or grease or anything like that?

A. No. If I did slip, the only thing I could say like I say, I don't know whether I had my leg over or whether [50] I was standing up on top of the rail or what. The only thing, if I slipped, it might have been on the rail there, that I might have slipped off of that.

Q. That is just a guess on your part?

A. Yes, that is just a guess on my part.

Q. Mr. Potts, I believe you also testified you are not sure whether you had a drink or not on the launch. Did your friend have a drink on the launch, if you know?

(Deposition of Malcom Edward Potts.)

A. I don't know. I can't remember whether he did or not.

Q. Also there was a lot of testimony, and some argument between Mr. Williams and I about drinking before the accident or after the accident and at the time of the accident.

Let me ask you this, do you consider that you drink quite frequently? A. Do I consider it?

Q. Yes. A. No, I don't.

Q. What would your testimony be with respect to whether on other occasions when you were drinking, whether you would drink more on other occasions than you did at the time of this accident? Now, do you understand me? A. No, I don't.

Q. Well, here is what I mean: We have got [51] occasions maybe before this accident——

A. Yes.

Q. ——that you might have been drinking, and we might have other occasions when you might have been drinking. Now, on those other occasions, just generally would you say you drank more at that time than you did the night of the accident, or less?

A. I would say I drank more.

Q. You drank more at other times than you did at the time of this accident?

A. That is right, yes.

Mr. Kennedy: I am sorry. That is sort of a confusing question.

Mr. Williams: So far as I am concerned, it is very confusing. You have tied in before and after-

(Deposition of Malcom Edward Potts.)

wards together, so it is now grossly confusing. I can redirect.

Q. (By Mr. Kennedy): Now, Mr. Potts, I discussed this accident with you this morning, didn't I?

A. Yes.

Q. And you have also discussed it with Mr. Williams, haven't you? A. Yes.

Q. Now, at that time I believe I told you that there was no secret or mystery about this, and that it was perfectly all right to tell Mr. Williams [52] that I had talked to you, or anything like that; am I right on this? A. Yes, sir, that is right.

Mr. Williams: That is objected to as immaterial and for the further reason that the question is not proper cross examination, because it was not covered on direct.

Mr. Kennedy: Because it was not covered on direct?

Mr. Williams: Yes. Not that question, not what you told him.

Mr. Kennedy: I am sorry, Mr. Williams, but you went into detail.

For the record, Mr. Williams, I don't want to have any impression in this deposition that Mr. Potts was instructed what to say or that there was anything like that.

Mr. Williams: In response to that, Counsel, there is no such impression created by the record as it now stands, and I do not see any reason to go into it further. Such a question has not been asked nor has it been raised even inferentially.

(Deposition of Malcom Edward Potts.)

Mr. Kennedy: Let us leave it like this: I think that the record should show that we both had an opportunity——

Mr. Williams: And availed ourselves of the opportunity.

Mr. Kennedy: ——had an opportunity and availed ourselves of the opportunity to discuss this accident with Mr. Potts, and that is the extent of it.

Mr. Williams: And that is all the record shows, up to [53] now.

(By agreement of counsel, then followed discussion off the record.)

(Record read by the Notary.)

Q. (By Mr. Kennedy): Mr. Potts, I wonder if you would describe the condition of this Jacob's ladder, as far as you can recall?

A. As far as I can recall, it was in good shape, there wasn't anything wrong with it so far as I know about that.

Q. I believe you also testified that you knew Mr. Farley or had seen him aboard the ship, is that right?

A. That is right.

Q. Did you come into contact with him very much?

A. Not too much, no.

Q. Did you ever observe him in his work?

A. No, sir.

Q. How did he get around on board the ship?

A. All right.

Mr. Kennedy: I believe that is all.

(Deposition of Malcom Edward Potts.)

Redirect Examination

Q. (By Mr. Williams): Mr. Potts, did you state—what do you weigh now?

A. About 155, I believe.

Q. What did you weigh at the time of the accident? [54]

A. I think at the time of the accident I must have weighed about 160, something around there, a little heavier than I am now.

Q. Do you know where Mr. S. L. Johnson is at the present time? A. No, I don't.

Q. Do you know where he lives when he is in the United States? A. His home is in Frisco.

Q. In San Francisco?

A. Yes. I did have his address, but I don't know whether I could find it now or not.

Q. Have you seen him since the accident?

A. Well, we came back together and I stopped at his home.

Q. But I mean after your ship returned to the United States. A. No.

Q. Does he follow the life of a seaman pretty much? I mean, is that what he does regularly?

A. Well, he shipped before, but this was his first union ship that he had been on. He had been in the MSTS before.

Q. What I am getting at is, is he shipping now, as far as you know? [55]

A. As far as I know, I don't know.

Q. Oh, you don't. A. No.

Q. You don't know what he is doing, now?

(Deposition of Malcom Edward Potts.)

A. Yes, sir.

Q. He is a cook?

A. No, sir. He was a messman on there.

Q. A messman? A. Yes.

Q. Mr. Potts, do you know if Japanese beer is the same alcoholic strength as American beer?

A. No, I don't.

Q. You don't know if it is stronger or weaker?

A. No, I don't.

Q. What about Japanese whisky, do you know about that, the Japanese whisky that you drank, is that stronger or weaker than American whisky, or do you know? A. I don't know.

Q. Did you know that ship was going to sail on the 6th of April? A. No.

Q. You did not know. You know, now, that it did leave on the 6th of April, the day of Mr. Farley's injury, don't you, or do you?

A. No, I didn't know it. [56]

Q. You didn't know that?

A. No, sir. I thought we went ashore there after that.

Q. Your recollection is that you went ashore after his injury? A. Yes.

Q. That the ship stayed there for some time?

A. Yes.

Q. You recall that very clearly one way or the other on that?

A. No, I can't recall it clearly.

Q. But that is the impression you have?

(Deposition of Malcom Edward Potts.)

A. Yes, the impression I have, that accident happened on the first night we went ashore.

Q. The first night you went ashore?

A. Yes.

Q. Do you know where you got on the ladder to go down to the launch when you were going ashore?

A. No. I can't remember.

Q. You don't know if you got on at the main deck or at the boat deck?

A. Oh, it was off the main deck.

Q. You got on someplace at the main deck?

A. Yes.

Q. Do you recall clearly where the Jacob's ladder [57] was affixed? A. No, I don't.

Q. Could it have been affixed to the pipe rail, on the boat deck? A. It could have been.

Q. One deck above the main deck?

A. I don't know. I don't remember that.

Q. But you know that you got on the Jacob's ladder at the main deck? A. Yes.

Q. When you went down to go ashore?

A. Yes.

Q. And when you returned from ashore——

Mr. Kennedy: Excuse me. You are starting in to lead a little bit.

Q. (By Mr. Williams): And when you returned from ashore, do you know if the Jacob's ladder was affixed the same way as it was when you went to shore? A. I do not.

Q. You don't. A. No, sir.

Q. Do you know when you went up the Jacob's

(Deposition of Malcom Edward Potts.)

ladder whether or not as you reached the main deck, you had to step around the side of it to get off onto the main deck?

A. No, I don't remember that. [58]

Q. You don't remember?

A. Whether I had to step around the side or not.

Q. You don't know whether—— A. Yes.

Q. How much space would you say there was on the launch from between the cabin which was on the liberty launch and the side of the vessel of the liberty launch, was there a wide space there, or was there no space there?

A. There was a little space, not much. You mean between the cabin and the——

Q. And the edge.

A. And the edge of the boat?

Q. Right.

A. Yes, there was a little space, not much.

Q. Could you walk around there? A. Yes.

Q. You could? A. Yes.

Q. Is that the way you went or the other members of the crew went? A. No.

Q. You all went out of the front?

A. As far as I know, yes.

Q. Well, if you had gone out of the rear, you would have had to walk around the edge, would you not? [59] A. That is right.

Q. And the liberty launch pulled up so that its bow, the front part of the liberty launch, was about even with the Jacob's ladder, is that correct?

(Deposition of Malcom Edward Potts.)

A. No, no. The front part was protruding forward.

Q. How much?

A. Oh, I would say about eight foot, until it got back close to where the cabin was.

Q. Where was the Jacob's ladder with relationship to the front of the cabin on the liberty launch that you referred to?

Mr. Kennedy: I object to that on the grounds that it is improper redirect examination. This matter was not covered in the cross examination.

Mr. Williams: Would you please answer the question?

Maybe you had better read it.

(Pending question read by the Notary.)

The Witness: I would say about three or four feet in front of the cabin.

Q. (By Mr. Williams): How much space was there on the liberty launch in front of the cabin?

Mr. Kennedy: Excuse me. I am sorry. "How much space was there in front" of what?

Q. (By Mr. Williams—Continuing): On the liberty launch, on the deck of the liberty launch?

A. Yes——

Mr. Williams: I will change the question to that extent. In front of the cabin of the liberty launch?

Mr. Kennedy: The same objection, as it is improper redirect, and to save me from jumping up and down here all the time, can it be understood I will have a continuing objection?

Mr. Williams: You better interpose each one.

(Deposition of Malcom Edward Potts.)

Mr. Kennedy: Very well.

Q. (By Mr. Williams): All right. Now, do you know the question?

The Witness: Yes.

Mr. Williams: Would you please answer?

The Witness: How much space was in front of the liberty launch?

Q. Forward from the cabin.

A. From the cabin. Oh, let me see. I would say about five or six feet, something like that, maybe more.

Q. That was the only place on the liberty launch from which you could board the——

Mr. Kennedy: Objected to as leading.

Mr. Williams: Wait until I finish my question.

Q. (Continuing): ——from which you could board the Jacob's ladder?

Mr. Kennedy: Objected to as leading. [61]

Mr. Williams: I will withdraw the question.

Q. State whether or not the deck of the liberty launch forward from its cabin was the only place from which you could board the Jacob's ladder at the time and place referred to.

Mr. Kennedy: Objected to as leading.

Q. (By Mr. Williams): Will you answer the question? A. Yes.

Q. That is the only place?

A. That is the only place. In other words, you mean you have to come up there to get on the Jacob's ladder, is that what you mean?

Q. That was the import of my question, yes.

(Deposition of Malcom Edward Potts.)

A. Yes, yes.

Q. Do you know if there were any men waiting there when you started up the Jacob's ladder?

A. No. I can't remember. I don't think so, but I don't remember for sure.

Q. You were the second man up the Jacob's ladder? A. Yes.

Q. Well, did the men just file out of the cabin and onto this deck preparatory to going up?

A. Yes.

Q. Were you on regular shore liberty at the time you went ashore? [62] A. Yes.

Q. You had received permission from your superior to do so? A. Yes.

Q. And at the time of your return, you were returning to the ship to spend the night there in your bunk? A. Yes.

Q. And you did not have to go to work again that next day? A. No, sir.

Q. Mr. Potts, I believe you stated on cross examination that at other times when you drank, that you had more to drink than you had on this particular occasion. A. Yes.

Q. That was your testimony, was it not?

A. Yes.

Q. Now, did you have reference to times after the accident and after this occasion, or did you mean times before?

A. I will say times before and times after.

Q. Both? A. Yes.

Q. I see. That you had more to drink than you

(Deposition of Malcom Edward Potts.)

had upon this occasion? A. Yes. [63]

Q. Did you have anything to drink on this ship, on the way across? A. No, sir.

Q. And you didn't have anything to drink for at least 27 or 28 days before you went to port?

A. More than that.

Q. More than that? A. Yes.

Q. How much more than that? How long had it been before this occasion that you had had a drink, would you say?

A. Oh, let me see. Say up in January.

Q. Early January or late January?

A. I will say late January.

Mr. Williams: No further questions.

Recross Examination

Q. (By Mr. Kennedy): Mr. Potts, I just have several questions here. A. Yes.

Q. About two. Now, you testified further with respect to the distance on the launch's forward part and various things like that. Is your memory very clear as far as these distances are concerned?

A. No. I am just estimating and guessing at the——

Q. A general estimate? A. Yes. [64]

Mr. Kennedy: I believe that is all.

Mr. Williams: Mr. Potts, you have the right to read this deposition and sign it after reading it, if you want to, or you can reserve that right.

Mr. Kennedy: Or waive that right.

Mr. Williams: Or you can waive that right. That

(Deposition of Malcom Edward Potts.)

is what I mean. You can either do that or not, after the reporter has transcribed it and typed it up. It is not necessary that you do so, but you can, if you wish. What do you want to do? Do you wish to waive the reading and signing of the deposition, or do you wish to see it and read it and sign it after he has prepared it?

Mr. Kennedy: Off the record.

Mr. Williams: Off the record.

(Discussion off the record.)

The Witness: If I want to, I can take it and read it and if I think everything is correct and right in it, then I sign it and then give it back, is that right?

Mr. Kennedy: Yes.

The Witness: It doesn't make too much difference.

Mr. Kennedy: As far as we are concerned, you can waive the right.

Mr. Williams: You can waive the right, but it is up to you.

The Witness: If I waive it, then it will just go on [65] to you?

Mr. Williams: Yes, that is correct.

The Witness: Then, there is no need that I should sign it. I waive that right.

The Notary: Do you also waive reading it?

The Witness: Yes. [66]

[Endorsed]: Filed March 25, 1955.

LIBELANT'S EXHIBIT No. 3

453

/Rejected/

FILE: GM/FS/A25/0815

REPORT OF PERSONAL ACCIDENT NOT INVOLVING DEATH

UNITED STATES COAST GUARD

NAVCG-924-C (Rev. 11-65)

INSTRUCTIONS

BUREAU BUREAU NO. 45-1010

APPROVAL EXPIRES July 31, 1968

This form is to be filled out whenever any person (passenger, member of crew, or other person, except longshoremen and harbor workers) is injured on board any vessel of the United States and the injuries incapacitate the injured person for a period in excess of seventy-two hours (3 days). No report of injuries to longshoremen or other harbor workers occurring on vessels need be made, as by other provisions of law such injuries are reported to the United States Employees Compensation Commission.

A signed original and two signed copies shall be addressed to the Officer in Charge, Marine Inspection, in whose district the accident occurred, or in whose district the vessel first arrived after such casualty. The report shall be submitted within ten (10) days after the accident or within ten (10) days after the vessel's first arrival at a United States port if the accident occurred at sea. The report may be submitted by mail, but in order to avoid delay in investigations, it is desired that reports be submitted in person. Submission of reports in person may be made to a Marine Inspector at any port convenient to the Master. The Officer in Charge, Marine Inspection, shall forward one copy to the Commandant, U. S. Coast Guard, and one copy to the District Coast Guard Officer.

TO OFFICER IN CHARGE, MARINE INSPECTION, PORT OF:

PORTLAND, ORE.

DATE SUBMITTED 8-21-52

I. PARTICULARS OF VESSEL AND VOYAGE OR PLACE

1. NAME OF VESSEL SS AUGUSTIN DALY		2. HOME PORT, OR PORT WHERE NUMBERED, IF MOTORBOAT San Francisco, Calif.	
3. OFFICIAL NUMBER 245 223		4. NAME OF OWNER OR OPERATOR U. S. Government (W.R. Chamberlin, Gen'l Agent)	
5. WHERE ACCIDENT OCCURRED? <input checked="" type="checkbox"/> IN PORT <input type="checkbox"/> AT SEA		6. IF ACCIDENT OCCURRED IN PORT, GIVE NAME OF PORT Sasebo, Japan	
7. IS ACCIDENT OCCURRED AT SEA, COMPLETE THIS LINE	8. LAST PORT OF DEPARTURE --	9. DATE OF DEPARTURE --	10. WHERE BOAT --
			11. DATE VOYAGE COMPLETED --

II. PARTICULARS OF INJURED PERSON, INJURY, AND ACTION TAKEN

1. NAME OF PERSON INJURED JOHN FARLEY		9. HOME ADDRESS Box #15, Reedville, Oregon	
10. AGE 58	11. CAPACITY IN WHICH EMPLOYED ON VESSEL 2nd Asst. Engr.	12. DATE AND TIME OF INJURY (Specify time standard) April 6th, 1952 - 0040 (Jap Std Time)	
13. NATURE OF INJURY Possible broken back, possible broken shoulder - no doctors report received			

John Farley was waiting on liberty boat at 0040 April 6th 1952 to climb aboard the vessel with pilots ladder when M. Potts, Asst Cook, lost his grip and fell from the Pilot ladder, falling on John Farley knocking him down and unconscious. M. Potts was not injured.

14. WAS INJURY IN LINE OF DUTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		15. DAYS INCAPACITATED DUE TO INJURY, DURING THE VOYAGE Remainder of voyage, approx. 4 1/2 months	
--	--	---	--

No - but due to probable fault of M. Potts somehow losing his grip on ladder.

16. NAME AND ADDRESS OF WITNESSES TO ACCIDENT (At least two, if possible) H. Morgan, Oiler - 707 - 29th Ave. S		17. CITY AND STATE Seattle, Washington	
18. IF INJURED PERSON WAS HOSPITALIZED, CHECK ONE <input checked="" type="checkbox"/> FOREIGN HOSPITAL <input type="checkbox"/> DOMESTIC HOSPITAL Give name and address of hospital 8021 Station Hospital (U.S. Army) Sasebo, Japan		19. IF FOREIGN HOSPITAL, WAS REPORT MADE TO U.S. CONSUL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Give location of consul to whom report was made. Pusan, Korea	

CERTIFIED TO BE A TRUE COPY OF A SIGNED COPY IN FILES OF MERCHANT MARINE INVESTIGATING SECTION, PORTLAND, OREGON.

/s/ W. J. ACCURSO

Signature of Master

J. W. CONWAY, LCDR, USCG;

Senior Investigating Officer, Portland, Oregon.

(2)

LIBELANT'S EXHIBIT No. 4

March 25, 1954

W. R. Chamberlin & Co.
601 Board of Trade Building
Portland 4, Oregon

Re: John Farley
Injury of April 5, 1952
SS Augustin Daly

Gentlemen:

Claim is hereby formally made against the United States of America, as owner and operator of the SS Augustin Daly, through you, as general agent, by the undersigned, John Farley, former Second Assistant Engineer, employed on board said vessel, for damages and maintenance and cure arising out of injuries sustained by him in his service on said vessel on a voyage commencing on or about February 24, 1952, at Portland, Oregon.

The undersigned, Mr. Farley, received injuries on or about April 5, 1952, in the harbor of Sasebo, Japan, when another crew member fell from a pilot (or Jacob's) ladder affixed to said vessel, and landed on the head and shoulders of the undersigned, who was standing below in a lighter alongside the vessel, waiting to go aboard said vessel.

At the aforementioned time and place the undersigned sustained fractures of the clavicle and several vertebrae, and other general injuries to his shoulders and back, all of which has totally incapacitated him from the performance of any gainful occupation to this date. The undersigned has been

informed, and he believes, that the injuries to his back and shoulders are permanent.

The undersigned, John Farley, claims damages in the amount of \$110,000.00, by reason of the negligence of the ship owners, in failing to provide him a safe means of ingress and egress to said vessel; in failing to provide him with a safe place in which to work, and in maintaining an unseaworthy vessel.

The undersigned also makes claim for maintenance and cure in the amount of \$8.00 per day for an indefinite period of time from and after July 23, 1953.

The claimant was born at Newark, N. J., January 28, 1894, and his present home address is P. O. Box 15, Aloha, Oregon. His certificate of identification number is BK. No. 107585.

Very truly yours,

cc: U. S. Maritime Administration
West Coast Transoceanic SS Line
Krause, Evans and Lindsay

LIBELANT'S EXHIBIT No. 7

W. R. Chamberlin & Company

Wages paid to John Farley for services performed
S.S. Augustin Daly February 2, 1950 to Au-
gust 13, 1952:

	Wages Including Overtime	Wages Plus F.O.A.B.
Feb. 2nd to 8th.....	\$ 80.49	\$ 121.49
Feb. 9th to 24th....	438.27	466.17
Feb. 25th to Apr. 6th	842.79	913.74
	<hr/>	<hr/>
Sub Totals	\$1,361.55	\$1,501.40

Unearned Wages:

April 7th to July

31st 1,670.91

Aug. 1st to Aug. 13th 188.80

Total Wages ...\$3,221.26

Total Wages and F.O.A.B.....\$3,361.11

* * * * *

LIBELANT'S EXHIBIT No. 8

[Rejected]

April 3, 1954

Krause, Evans & Lindsay,
Attorneys at Law,
Portland Trust Building,
Portland 4, Oregon.
Attention Mr. Dennis Lindsay.

Re: Farley vs. U. S. A.
U. S. District Court,
Civil No. 7435.

Dear Mr. Lindsay:

Enclosed herewith is a copy of the libel filed yesterday in the above-captioned cause, wherein you have advised that you will represent the respondent, United States of America.

You may be assured that plaintiff will not insist upon the filing of any answer or other appearance on behalf of the respondent until after May 25, 1954.

Yours very truly,

Williams & Alley

.. .. .

David R. Williams

DRW:EH

Enclosure

LIBELANT'S EXHIBIT No. 13

DEPOSITION OF RAY H. ROBINSON

* * * * *

RAY H. ROBINSON

was thereupon produced as a witness in behalf of libelant, and, having been first duly sworn by the Notary, was examined and testified as follows:

Direct Examination

Q. (By Mr. Williams): Would you state your full name please? A. Ray H. Robinson.

Q. What is your present address, Mr. Robinson?

A. Post Office Box 104, Brightwood, Oregon.

Q. That is your home address?

A. Home address.

Q. What is your business address?

A. Business address, 216 Governor Building, Portland, Oregon.

Q. What is your occupation, Mr. Robinson?

A. I am a Marine Engineer, my trade is Marine Engineering, and present since January 1, 1941 I have been Financial Secretary, Treasurer and Business Manager for Marine Engineers Beneficial Association No. 41, Portland, Oregon.

Q. And, you are so employed right now?

A. I am.

Q. Do you know where you are going to be tomorrow, which is July 27th, and Thursday, July 28th? Are you going to be in Portland?

A. I will be enroute or in San Francisco, California. [3]

(Deposition of Ray H. Robinson.)

Q. And, you do not expect to be back until what time? A. The first of next week.

Q. Mr. Robinson, prior to having your present employment, you were a Marine Engineer aboard various ocean going vessels?

A. Yes. I started to sea in 1923, worked as a fireman, oiler—got my license in August, 1934; have been an engineer on the various vessels until taking the position that I have now, in 1941.

Q. And, the men that you represent, are they substantially the only Marine Engineers in this area; are substantially all of the engineers in this area members of your Local?

A. All in the Pacific Coast area, that is deep sea engineers except for a very few belong to, I believe the Affiliated of the S.I.U. There is a couple of lumber carriers here.

Q. Are those latter category of men small in number? A. Very small.

Q. Approximately how many men in your Local? A. This Local in Portland?

Q. Yes. A. 282.

Q. Are they all licensed engineers?

A. All licensed engineers.

Q. Now, I am going to hand you some of these—an agreement between the National Marine Engineers' Beneficial Association, [4] Pacific Coast District and the Pacific Maritime Association covering offshore, intercoastal and Alaska trades, dated November 17, 1946.

Does this particular booklet that you have in

(Deposition of Ray H. Robinson.)

your hand represent the agreement between your Union and the Pacific Maritime Association with regard to wage rates for Marine Engineers during the periods covered therein?

A. It does as of these dates.

Q. What is the pay scale for a Second Assistant Engineer sailing on a Liberty class vessel as of the earliest date mentioned therein? A. \$379.68.

Q. And, is that particular booklet amended by a pamphlet part effective as of a later date?

A. It is.

Q. Is there a change by virtue of the amendment in the wage rate, monthly wages for a Second Assistant Engineer, sailing on a Liberty vessel?

A. It has been raised to \$411.88.

Q. As of what date?

A. As of effective September 30, 1950.

Q. I am going to hand you the next booklet, Mr. Robinson, which appears to be an agreement between the same parties, effective date is stated on the cover to be June 16, 1951, to and including June 15th, 1953. [5]

I will ask you what wage, monthly wage scale is provided therein for a Second Assistant Engineer sailing aboard a Liberty class ship?

A. Effective July 14th, '51, \$426.21.

Mr. Krause: What was that again?

The Witness: \$426.21. Then effective one month later or July 15th, 1951, it was raised to \$435.89.

Mr. Krause: What was that date when that became effective, July what?

(Deposition of Ray H. Robinson.)

The Witness: July 15th.

Mr. Krause: 1951?

The Witness: Yes.

Mr. Krause: What was the previous one for then?

The Witness: July 14, '51.

Mr. Krause: That is just one day apart?

The Witness: Yes.

Mr. Krause: For a period prior to July 14, 1951?

The Witness: June 16th to July 14th.

Mr. Krause: Oh, June 16th to July 14th.

However, I have no objection to those contracts and anything being read, the rates out of those, so you don't have to put this up unless you have some question——

Mr. Williams: I just want to show what they are.

Mr. Krause: If you prove the contract the Judge can read it or you can just as well—— [6]

Mr. Williams: I realize that, but you have dates involved in this matter and there are some things here that perhaps we will require some explanation about.

Q. (By Mr. Williams): The next agreement I am handing you states that it is effective June 16th, 1953, to and including June 15th, 1954. Is that the next applicable agreement as to wages between these parties that we have mentioned?

A. That is.

Q. And, what is the wage scale therein provided

(Deposition of Ray H. Robinson.)

for a Second Assistant Engineer sailing on a Liberty class vessel?

A. \$521.33. That was effective June 16, 1953.

Q. I am going to hand you another agreement which appears to be effective June 16th, 1954. Is that the current agreement between the parties?

A. That is the current agreement and there was no change in wages.

Q. The wage scale is the same as the previous one?

A. That's right.

Q. Which would be the \$533——

A. This was effective June 15th, '54.

Q. And, the rate therein provided——

A. \$531.23.

Q. Now, Mr. Robinson, in addition to these basic wages does the Marine Engineer, are there provisions in the agreement whereby the Marine Engineers are entitled to overtime [7] under certain circumstances?

A. Yes, there is a penalty rate of overtime for Marine Engineer. He is entitled to during his regular working hours while on watch at sea, we will say on Saturdays, Sundays and holidays of \$2.29 additional.

Q. That is the current?

A. The current. Now, that is during his regular eight hour work. Then, for all work performed over eight hours a day he receives overtime rate of \$3.29 per hour. That would be for time in excess of eight hours or for work in port on Saturdays, Sundays and holidays.

(Deposition of Ray H. Robinson.)

Q. Mr. Robinson, approximately what percentage, if you know, of your employees are presently employed? A. In this Local?

Q. Yes. A. In this Local itself?

Q. Yes.

A. At the present time I have 24 employees out of work. I just checked the books a few minutes ago.

Q. 24 out of two hundred and——

A. I wouldn't put the 200, the total membership—I would say 240 men there are who wish to work who are constantly working.

Q. You have some men who do not appear ready and willing to take jobs? [8]

A. That's right.

Q. That would represent about ninety per cent?

A. Around ninety per cent at the present time are working who wish to work.

Q. Do you know what the average monthly pay would be for a Marine Second Assistant, Marine Engineer, sailing on a Liberty class vessel that was making a foreign voyage, not an intercoastal.

Mr. Krause: I would like to object to that. There is no average. Every steamship company manages its operation differently and some vessels have much more overtime than others.

Mr. Williams: You have no objection to the form of the question?

Mr. Krause: No, go ahead.

Q. (By Mr. Williams): Would you answer that, Mr. Robinson?

(Deposition of Ray H. Robinson.)

A. What Mr. Krause has said is very true. I would hesitate to state a true average whereas the men come in many of them quoted what they have made, why it will be safe to say that from \$700 to \$800 is a fair figure. Many of them have told me they made \$800.00, and I might say it might have been excessive overtime, but with the penalty time, the night watches in foreign ports, they are entitled to, on top of their monthly wages, a \$700 figure is pretty safe if you took all companies involved, I believe you would see it a \$700 average [10] would be pretty close.

Q. Mr. Robinson, are there any compulsory retirement dates for Marine Engineers? A. No.

Q. There are none provided either by your own Union or the Coast Guard?

A. No. If a man is physically fit he may work as an Engineer, Marine Engineer, as long as the employer will have him.

Q. Yes. Is there any provision at the present time for pensions for retired Marine Engineers, either Union sponsored or company sponsored or both?

A. At this date there is no pensions, that is by the Marine Engineers Union. There are a few companies who do have their own pensions if the men have worked in that company 20 or 25 years length of services plus age, a certain amount of money is paid per month in the retirement fund by the employee and the rest of it is by the em-

(Deposition of Ray H. Robinson.)

ployer, but there is only a few companies that do that.

Q. Have such plans been in effect for a long time or just recently?

A. I would say for quite awhile. Matson Steamship Company has had it for a long time, but I don't recall any other company on this coast that has such a plan.

Q. If a Marine Engineer, a member of your [10] Local is of the age of seventy years and in otherwise good health, is he able to be employed aboard ocean going vessels?

A. Well, that is a question I believe I answered before. If the company will accept him, age is no barrier.

Q. Yes.

A. You see, Engineers must go through a physical. The companies have insurance doctors, their own doctors, and they have the public health doctor, so he must be physically fit before they will pass him.

Q. But, otherwise there is no inhibition just because of age?

A. No, very little. With the sea going game they are very fair pertaining to age.

Q. Does the work of a Second Assistant Marine Engineer, does his employment occasionally require heavy lifting or hard work?

A. Oh, I would state that at times there is hard work, bound to be, and it is all according to what you would call as heavy lifting.

(Deposition of Ray H. Robinson.)

It is true on a vessel he may call for help to help him, but he is expected to work, to put out work and it is hard work, I will classify it that way, at times.

Q. You mean to indicate, do you, that he does not do hard work, hard manual labor all of the time? A. That is true. [11]

Q. But, on occasions?

A. On occasions, just occasionally.

Q. That he is required to do so? A. Yes.

Q. Mr. Robinson, from your previous experience at sea, I wonder if you are familiar with any practices aboard ship with regard to orders to be given between different departments of the ship itself by various officers of the ship?

A. I don't think the orders have been changed or the ones in charge there have been changed for many years.

Q. Then, as far as you know they are the same today as they were when you were shipping?

A. That is true.

Q. Do you know in general what orders and responsibilities—I should say responsibilities and duties a Second Assistant Marine Engineer has with regard to other men on the ship, that is to say, do you know who he is required to take orders from and to give orders to?

A. He takes orders we will say from the Chief Engineer or the Captain of the vessel at all times and occasionally the First Assistant Engineer will give him an order, usually convey an order from the Chief Engineer.

(Deposition of Ray H. Robinson.)

Those are the only men that give the Second Assistant his orders. [12]

Q. Now, what men are under the Second Assistant, to whom does he direct orders if to anyone?

A. Well, the men on his watch, whom he may have on his watch or the men who may be working with him in port on repair work, an additional fireman, oiler or wiper, but that is the only ones that he gives orders to. Some of the unlicensed crewmen who are either on watch with him or working with him in port.

Q. They are unlicensed crewmen in his department?
A. That's right.

Q. That is in the Engine Department?

A. That's right.

Q. That would be wipers and oilers and firemen?
A. That's right.

Q. Does a Second Assistant Marine Engineer have the right to give orders not pertaining to his Department, that is not pertaining to engine room work to other unlicensed personnel aboard the ship?

A. No. No, with the exception that he may just to the mess boy, he orders his meals and may ask for certain changes in his room or something of that sort, but he doesn't give any direct orders to any other department, within any other department.

Q. Does he as a matter of general practice give orders with regard to ingress and egress from the ship by other [13] members, unlicensed members of the crew that are going on shore liberty?

(Deposition of Ray H. Robinson.)

A. Not to my knowledge I have never heard of him giving any orders.

Now, what do you mean, if he were for some unknown reason, if he were put in charge of a boat, a liberty boat taking crew members ashore then he would be able to give orders while he was in charge of that boat, but that doesn't happen too often. I don't know just what you are getting at now.

Q. Do you have reference there to a liberty boat, to a ship owned liberty boat?

A. One of the life boats or work boats.

Q. You don't have reference to a liberty launch that is chartered from a private company or a person in a foreign port? A. No.

Q. You don't mean that?

A. No. Liberty boat, he would just be a passenger aboard that boat, he would have no right to give any orders because he is off duty anyway.

Q. Is it your testimony then that crew members going ashore in a liberty launch which is not owned or operated by the ship itself, that no one is in charge of the vessel going to the dock or coming back? [14]

A. If it is privately owned and the company or the Government is furnishing the boat there is no crew member would be in charge of it or have anything to do with it as far as orders is concerned.

Mr. Williams: I have no further questions.

Mr. Krause may wish to ask you some questions.

(Deposition of Ray H. Robinson.)

Cross Examination

Q. (By Mr. Krause): Mr. Robinson, what sort of a license do you hold now?

A. First Assistant Steam, any horse power.

Q. And, that is it as far as you have gone with Engineer's license, is it? A. That's right.

Q. Now, you have sailed in what capacity?

A. Sailed Third, Second, First Assistant.

Q. You have sailed Trans Pacific, have you?

A. Trans Pacific.

Q. You are familiar with the anchoring of vessels in Japanese harbors while they are discharging and loading cargoes?

A. I have been anchored in those harbors many, many times on vessels from 1923 until 1941.

Q. When they were discharging and loading out while they were at anchor or at a buoy?

A. Yes. [15]

Q. Then you have gone ashore in vessels provided by the ship when you were on liberty yourself? A. That's right.

Q. These in your time did the ship provide the liberty launch or were they launches that just came out there and the crew paid for their transportation?

A. Once in a great while the company would have a launch but very seldom.

Q. Now, Mr. Robinson, you many times signed Articles, haven't you, on American vessels?

A. Yes, sir.

(Deposition of Ray H. Robinson.)

Q. And, the Engineers along with all of the other crew sign the same Article, do they not?

A. They do.

Q. Among other things, those Articles provide that no grog or liquor is to be brought aboard the ship, do you recall that? A. Uh-huh.

Q. Does an Engineer, say a Second Assistant Engineer have any duties or obligations with respect to enforcing that part of the Article?

A. I to my knowledge he does not except his own self bringing it aboard. When he signs those Articles he agrees that he will not bring the grog aboard but I don't believe that he is supposed to watch every other crew member. [16]

I know I was never asked to in all of the years I went to sea.

Q. Now, did you ever participate in searching the crews quarters in order to dispose of liquor that they had brought aboard?

A. My time I never was on a search party, no.

Q. You know of it having been done?

A. I know it has been done.

Q. Who does it, who makes the search?

A. Well, the heads of the department made the search while I was aboard.

Q. Only the Chief Engineer?

A. No, the Captain at these few times, the Captain, Chief Engineer, Chief Steward and sometimes the Chief Mate and First Assistant.

Q. First Assistant Engineer?

A. Sometimes they would go along as a witness

(Deposition of Ray H. Robinson.)

to the effect. He would go as a witness with the Chief.

Q. When searching engine room quarters you say that the Mates did that job or did the Engineer Officer do it?

A. The Engineer Officers did but usually the Mate or the Skipper would be with the Chief Engineer.

Q. Yes.

A. Very seldom go alone. They have some other department with them. [17]

Q. Now, you know Mr. Robinson, don't you, that the ship owner has certain obligations towards his crew, doesn't he? A. Uh-huh.

Q. Who assumes those obligations for the ship owner when the ship is at sea and away from port?

A. The Captain would be.

Q. The only one?

A. He would be the representative of the company. It is sometimes considered that the Chief Engineer is a representative also but it is generally quoted and believed that the Captain is the representative of the company.

Q. Well, for certain purposes, but we are not talking about the operation of the vessel—do all of the officers have any obligation to do everything that they can to preserve the ship or crew and cargo from injury or loss?

A. The Engineers have the obligation to keep the vessel in very good running condition, I will

(Deposition of Ray H. Robinson.)

say that, but they are not considered to be nursemaids for the rest of the crew.

Q. They have no obligation towards the other members of the crew than to see that they are protected against injury?

A. Yes, yes as far as injury. You have everything in safe working order. If an Engineer would see anything that wasn't in safe working order he certainly should report it and attempt to have it fixed.

Q. Pardon me, go ahead. [18]

A. But, as far as I might say, being a guardian or a nursemaid to the rest of the crew, no, you don't have anything to do with that. You would be in trouble at all times if you would tell a sailor or a mess boy or a fireman or anyone else he can't go ashore and take a drink. He would say, mind your own business, which I have seen that happen various times; my own crew members come back with a few drinks or so and they would raise the devil because they weren't producing, you would get none of your damn business what I do when I am not aboard this vessel is what you would get.

Q. Is it any of the officers business when they do get on the ship?

A. Yes, yes, I will say that when they are drinking aboard the ship why it is the business of the officers, the heads of the departments.

Q. Just the Chief Engineer then for the engine room crew and the other officers have nothing to do with it?

(Deposition of Ray H. Robinson.)

A. The other officers are to report to the Chief Engineer.

Q. Well, when you see a man drinking as Second Assistant Engineer, a member of the engine room drinking on board the ship, we will say he is right on watch at the time, is it one of your duties to tell him to stop?

A. It is if he is on watch.

Q. And, if he is not on watch and drinking in his quarters, is it your duty to tell him to quit drinking on the ship? [19]

A. First place I don't see what business an Engineer has of rooting around the crews quarters. That is his home and I for one wouldn't be around the crews quarters unless I was called to go back there, trouble of some sort.

Q. You can assume you are back there anyway. Now, when you see him drinking on the ship, knowing of the rule that there is to be none on the ship and that he is not to have any intoxicating liquor with him, now what do you say, the Second Assistant Engineer, does he have any duty in that regard?

A. I will say that he personally had no right to tell that man, you quit your drinking. I would say he should report it to the Skipper and the Chief, that is it, he had no business—he should report it to his superiors.

Q. Now, does the Second Assistant have any obligation at all towards warning a member of the crew not in his department, if he sees him doing

(Deposition of Ray H. Robinson.)

something that he considered hazardous or dangerous?

A. If he is jeopardizing anyone's life I would say that he would have a right to at the time to attempt to stop him and then report it to his superior.

Q. Well now, assume that the Second Assistant is standing at the foot of a Jacob's ladder or pilot ladder and a member of the Steward's Department is climbing this ladder roughly 18-20 feet high with a bottle of whiskey under one arm and another bottle of whiskey in his right hand, would the Second [20] Assistant Engineer have a duty to warn him?

A. The Second Assistant wouldn't have a thing to do with that man as long as he was in this liberty boat.

Q. He is going up the pilot ladder.

A. He is not aboard the vessel. There is someone there to stop him if he is doing something wrong, but until he gets aboard the vessel, the Second would have nothing to do with him, nothing to say to him.

Q. He would have no duty to warn him against the chance of getting hurt?

A. If I were aboard there, Mr. Krause, I could probably answer it a little more, if I were there and seen what it was. If a man was stupefied drunk I myself would attempt to help him, but I don't know what condition this man was in actually, but

(Deposition of Ray H. Robinson.)

I do say that the Second would have no business to give this man any type of orders at that moment.

Q. You consider that an order when he just warns the man that that is a dangerous thing to do?

A. If the man is a seaman he sure as the devil would know it was dangerous.

Q. We are talking about a man, a member of the Steward's Department at the moment.

A. It is all according how long had he gone to sea.

Q. Well, usually, Mr. Robinson, all you know about the members of the Steward's Department is that they have been [21] on the ship since the beginning of that voyage.

A. That's right.

Q. Now rarely do you know how much sea experience they have had, but assuming that you know nothing about that and a member of the Steward's Department is climbing a Jacob's ladder, both arms are or hands encumbered as I have described, does that call for a warning on the part of an officer of the ship?

A. At the time I will say that the Second had no business to give any kind of an order. It was up to him if he wanted to be a good fellow, if you saw the guy was not doing the proper thing, attempt to help him, but on the other hand that messman as you say, whoever he may be, might of just told him where to go. If he butted in he may have had an argument with him on the way out to the boat. Not knowing the nature of who that man was climbing the ladder, I couldn't answer.

(Deposition of Ray H. Robinson.)

Q. Your view is that he had no obligation to try to protect members of the crew against injuring themselves under those circumstances?

A. I don't think he had any obligations when he was sitting in the boat as far as butting into what this man done.

Now, if the man was stupid drunk, I would say that he has a moral obligation as a human to try to help him. That is the only obligation he had. I don't think he had an obligation to anyone but just to that man.

Q. Well, the fact that he is an officer of the ship you feel [22] doesn't put any duty on him to, in all situations, to try to protect the man against injury?

A. Well, we will put it this way; maybe he is supposed to protect himself too. This guy is liable to turn around and open his head up with something. I have seen that.

Q. Let me ask you this, Mr. Robinson, in going up a pilot's ladder with a bottle of whiskey under one arm and holding another bottle by the neck with the other hand, is that a safe or a dangerous method of climbing?

A. It is a dangerous way of climbing, a damn dangerous way.

Q. Now then, what about a man standing under the ladder while the man is going up in that position, is that a safe place for him to be?

Mr. Williams: Counsel, I feel that I should object unless you specify as to whether the individual you are referring to knows of the man in this condi-

(Deposition of Ray H. Robinson.)

tion, if he knows that the man is doing what you say he is doing.

The Witness: Normally someone is at the bottom of that ladder attempting to hold it.

Q. (By Mr. Krause): To hold it?

A. To hold that ladder or hang on to it because it will swing back and forth if it is a regular Jacob's ladder.

Q. Leaning against the side of the ship?

A. Sure, trying to hang on to it. He is on a boat, you have to hold the boat up next to the ship too, don't you? [23] You are bound to be under it.

Q. According to the testimony we had, it was tied, made fast to the ship some way or the other. That is all there is on it so far, so at any rate the men I am talking about were not trying to hold the boat in.

I am just asking you now as a general proposition if you see a man going up the ladder as I have described him, is it a safe place for you to stand at the foot of the ladder?

A. It isn't safe to stand at the foot of the ladder if the man had both hands on it as far as that goes. To stand under anyone wouldn't be safe unless you were forced to stand there. I would say that because a man's hands could slip, hell, on any ladder.

Q. Even a man that has both hands for the ladder there are times when they fall off of them perfectly sober?

A. No, I have never seen them fall, but I will say for my own protection as far as safety, many

(Deposition of Ray H. Robinson.)

occasions you will have them, two men going up the ladder at once.

Q. Well, is that what you advocated to members of the crew that you gave orders to, that they should do that?

A. I never gave any orders about climbing a ladder because I was in the engine room.

Q. Don't you have any straight up and down ladders in the engine room, Mr. Robinson?

A. Oh yes, more of them a few years back than you have now. [24]

Q. Now, did you tell your men to climb the ladder one immediately below another one?

A. Never gave such orders, no.

Q. Did you warn them against doing that sort of thing?

A. No, I can't say that I did because I just didn't have the occasion to do that.

Q. But, you said you saw some men doing that?

A. Oh, I have seen them at times.

Q. And it was under circumstances when you weren't under any obligations to instruct them or warn them?

A. No.

Q. Now, is a ship a place where people get hurt frequently?

A. Aboard the vessel?

Q. Aboard the vessel.

A. Oh, according to what you would say frequent. Some vessels you know you would have more accidents than others. The warning aboard the ship is safety first and they are fairly, pretty well corrected aboard the vessel as far as hazardous.

(Deposition of Ray H. Robinson.)

There are ladders that wouldn't be stationary and there are chains across where there is open spaces or they are covered up pretty well. It is negligence in the engine room if someone gets hurt when it is going in motion. At times there can be accidents, yes, falling on the floor and that, and you are hurt by working mechanical work, you are bound to get smashed up, but I don't think there is any [25] more accidents aboard a vessel than there is in any other type of work, myself.

Q. You don't think it is a hazardous occupation?

A. It is. It is considered hazardous, but it is no more hazardous than the hazardous occupations, the ones considered hazardous ashore. We have mechanical machine shops, power plants and various things of that sort that would be comparable.

Q. There are many, many that are comparable?

A. Yes.

Q. Are there places aboard ship where you could take bad falls unless you are watching what you are doing?

A. Any man could take a bad fall if he started down the engineer room ladder and didn't look what he was doing. Various places out on deck, going from one deck to another, stepping over a threshold, trip, there is places that you could if you weren't alert.

Q. As to pads and eye bolts and things that are fastened to the deck that you stumble over, you aren't watching?

A. That's right.

Q. Well, generally, Mr. Robinson, is a ship a

(Deposition of Ray H. Robinson.)

place where a man is expected to keep his eyes open at all times in order to avoid injury?

A. That's right, you normally have to.

Q. You normally have to. [26]

A. You have bad weather when the ship is turning and tossing it makes it a little more hazardous.

Q. Aboard ship you have to be observant of the loading conditions and cargo that is being swung overhead and so on?

A. Yes, they do. There is usually, normally, a hatch tender or a watchman there so if someone wouldn't be familiar with the operations of the vessel, they could stop them, but you are expected to keep your eyes open so you don't get hit with a sling load of lumber or cargo or open hatches, walk into them.

Q. Now, what do you say regarding the obligation of any crew member when another one precedes him up the ladder? Is it his duty to watch the man that is going up the ladder in order to protect himself, I mean?

A. Well, self preservation, if we put it that way, a man would be, should be watching any danger that might befall him, but if he thinks it is dangerous, if he doesn't he wouldn't be looking. That is a heck of a lot, a lot of people don't look when there is danger there, where if they had of been looking they wouldn't of got hurt.

Q. Now, you haven't been to sea since '34?

A. No, since 1941, January 6, 1941.

Q. Since 1941. Was it not uncommon for mem-

(Deposition of Ray H. Robinson.)

bers of the crew that had been on liberty going ashore to come back somewhat inebriated when you were sailing? [27]

A. That has been I guess the practice since there were seamen, that they went ashore and had a few drinks, that is a certain percentage. We don't say that all drink, of course, but they would go ashore for a few drinks and would be partly intoxicated when they came back.

Q. Well, it was not uncommon?

A. It wasn't uncommon, no, it wasn't.

Q. Now then, would a person coming from shore with seaman that had been on liberty, a man that is familiar with the sea and the operation of ships, would he normally expect that some of the men might be somewhat under the influence of liquor?

A. Well, I will say this, that a man who has gone to sea for many years has seen many of them under the influence of liquor. I will put it that way, and maybe on the other hand that a man going to sea a good many years and seeing that and there had been no accidents or anything, may tend rather to not pay any attention to any other man in that condition.

Q. He might not pay attention to the necessary things for his own protection?

A. Well, it may just become natural seeing that, we will say over a period of so many years, this same condition as you are speaking of.

Q. Well, it is common knowledge that people become careless in the face of dangers? [28]

(Deposition of Ray H. Robinson.)

A. That is true.

Q. If they are exposed to it a great deal?

A. Yes.

Q. Now, what I am particularly interested in hearing, what you have to say on whether or not you are coming back, a man, an experienced seaman and a licensed officer coming back from leave with a bunch of sailors and a number of messmen, colored messmen, cooks, and the method of getting aboard the ship is by a pilot or Jacob's ladder, is it your view that a man ought to, knowing of the drinking of the men under those circumstances, that he ought to see what condition those men are in, particularly if one of them proceeds him up a pilot's ladder?

A. Well, I will put it this way, I still say that he had no business butting into what they had did or what they were going to do, number one. Secondly, he should protect himself at all times. Now, if it is for his own good, he would protect himself, but he would have no right to give those men any orders, and he may not be fraternizing with the Steward's Department, it is another department, and very likely he wasn't in the same grog mill as these negroes you speak of.

They fraternize aboard the ship in saying good morning and so forth, but we don't mix with the other departments to any extent, and we certainly can't and don't give any orders. [29]

We have had a heck of a lot of trouble during the war and from the other unions, the race discrimination comes into it, where if you give an order

(Deposition of Ray H. Robinson.)

it is brought up in arguments, and it is kind of hard to know just what the situation was on that Liberty launch.

Q. I wasn't concerned about his giving anybody any orders. What I was concerned, what was he required to do in his own self protection when he was coming back in one of these liberty launches with a method of getting aboard the ship by a pilot's ladder and knowing that these men probably had been drinking while they were ashore.

Now, let me put it this way: Would a man, an experienced seaman have that in mind or should he have it in mind?

A. I say that he should protect himself at all times is true. Undoubtedly he was not, didn't see or wasn't paying any attention to who was going up the ladder, whether it was a man who wasn't capable of climbing with you say, just one hand is all he had, or who it was going up. Undoubtedly, he wasn't watching the man, there just isn't any getting around that.

Q. If he had been watching him, you don't think he would have stood where he could have fallen on him?

A. I doubt if he would be under him unless the occasion might have been that as I say, if it were a pilot's ladder or a Jacob's ladder. The ladder itself will swing a little bit [30] and usually you will attempt to steady that ladder if it is swinging around—I have done it to hold the ladder to help. When you come alongside with a boat, it is bound

(Deposition of Ray H. Robinson.)

to have a tendency to swing and at that time, of course, I would be looking right at the man who was going up.

Q. You would be watching him. Well, that is, you would keep your eyes on the man above if you had a job down at the foot of the ladder?

A. Uh-huh.

Q. Now, when you are talking about a pilot's ladder swinging, how does it swing?

A. Well, it is hooked, usually hooked up on, either on to the side of the ship where there is a plate extends up and then if it isn't tied at the bottom, which many times it wouldn't be, if there is a boat there floating, it is free, the ladder itself is free there at the bottom so it would have a tendency; to swing alongside of the boat.

Q. Now, if it is made fast to the rail of the boat deck then it is going to be, the ladder is going to be lying against the plate of the ship, isn't it?

A. Uh-huh.

Q. And, with a man on it above the point that he is standing on, there is no swinging of that ladder, is there?

A. No, because the weight would tend to hold it. It is the bottom—— [31]

Q. What difference does it make if the bottom swings if it doesn't swing at the point where this man is standing?

A. If it were held real steady it would be easier for you to step on up, it would be easier for the man going up, a little easier. Of course, I don't

(Deposition of Ray H. Robinson.)

say they were holding it or what the heck they were doing to the bottom of it.

The size of the boat, the condition of the water, there are so darn many things. If a man was there to see it, you could give better testimony.

Q. It would affect the thing?

A. It would affect the whole thing.

Q. Now, Mr. Robinson, I want to revert for a moment to the duties of the officers.

Do the officers, the Engineer Officers participate in fire and boat drill? A. They do.

Q. Do they give orders to the men in connection with fire and boat drill?

A. The Engineers occasionally, they tell them, occasionally there is an Engineer in charge of a certain life boat. He would give orders, but on a Liberty vessel I don't believe that the Second Assistant or even the First Assistant is in charge of a boat, so he wouldn't give the orders.

Q. The men assigned to the various lifeboats or to a lifeboat that an Engineer Officer is in charge of are not only [32] Engine Room men, are they?

A. That is true.

Q. That is, it will include Steward's Department and seamen too, probably? A. Uh-huh.

Q. Assuming that a man is doing something that would be hazarding the safety of the ship, would the Second Assistant Engineer have any duty to warn him about that?

A. Aboard the vessel itself?

Q. Well, aboard the vessel, say aboard the vessel.

(Deposition of Ray H. Robinson.)

A. He would, yes, any officer would if he would see anyone doing anything hazardous endangering the lives of anyone else he would be expected to warn him and then go, as I say, to his superior and tell it.

Q. Yes.

A. And, it is up then to the superior and the Skipper to get together and to alter or to stop this whatever it may be.

Various times, Mr. Krause, we will say about the drinking aboard the ship, if he happened to see it in a room he would be classed as a stool pigeon, and you know they could be down on him complete. So, they are pretty careful what they say right to the men they are working with.

They don't like to be classed as a stool pigeon and raising the devil, but I would say they should report it to their superior. [33]

Q. Well, the question is what the officers duties are, Mr. Robinson, not what they like to do.

A. Yes.

Q. Obviously you don't ever like to report anybody and probably everyone doesn't like to report anybody for any dereliction of duty, but the question is, what are the officers duties?

Now, that is what I am interested in. Now, you do say though that if you see a man that is doing something that is endangering either the ship or members of the crew, it would be your duty to warn him, the Second Assistant's duty to warn him?

A. Yes, it is, according to what he is doing, Mr.

(Deposition of Ray H. Robinson.)

Krause. If he was taking a drink I wouldn't say that he tell him that he shouldn't take a drink.

Q. Forget about the drinking. We are now saying he is doing something hazardous that is endangering the ship or a member of the crew, and we will say he is perfectly sober. A. Uh-huh.

Q. It would be the Second Assistant's duty to warn him and then report it?

A. If he were aboard the vessel, yes.

Q. Aboard the vessel.

Now then, if the man is doing that and he is just endangering the Second Assistant with this careless thing that he is doing, then it wouldn't be the Second Assistant's duty to warn [34] him?

A. Not if he weren't on the ship. The whole thing I say, a man, self preservation is what it is. A man should attempt to take care of himself. But, he couldn't give orders to the man when he is off of the ship in any respect.

Q. Well now let me—will you assume for this purpose that the ladder is for all ordinary purposes, and the Maritime Law a part of the ship?

A. Uh-huh.

Q. And when the man was on the ladder he was on the ship.

A. And the Second was on the boat, he was on the shore.

Q. In the launch down below it at the time, yes. But, it was still his ship, the Augustin Daly was still his ship, he was the Second Assistant on her—now you say that when he sees this man going up

(Deposition of Ray H. Robinson.)

there in what is a negligent fashion, assuming that he saw it and he saw the man endangered, what do you say as to his duty to watch this man, this third cook?

A. I would say if the man had anything but liquor or contraband aboard him, the Second Assistant would or should rather, help him get it aboard, but when it is against the law to take liquor aboard the vessel he sure as the devil wouldn't want to be touching that liquor himself, so I don't know what he would be able to say to this fellow because he doesn't rate a darn bit more than that man until they both get aboard [35] that vessel, as far as I can see, and he is not going to help him take that liquor aboard that ship, and he has no right to take it away from him aboard that launch and get his head busted in.

He has to protect himself to that extent.

Q. Now, these packages that this fellow had been carrying were not liquor then you feel the officer would have a different obligation?

A. I would say he may have—maybe they were on the outs, maybe he would say, I won't help him do anything. They might not have been friends too.

Q. Now, I am talking now about the safety of the Second Assistant Engineer. I am assuming that he didn't care what happened to this colored man, that man that was climbing up there, what about his own safety, was it his duty in order to protect

(Deposition of Ray H. Robinson.)

himself to warn that man against climbing the ladder in that way?

A. Well, I don't think that he was to warn the man at all, personally. I can't see where the duty enters into that at all. We are making a big thing out of a Second Assistant being an officer.

He is an officer, yes, considered by the law, but he is not around giving crew members and them orders. You see, he is just a Second Assistant. They call him a grease monkey actually and his authority doesn't amount to anything except [36] to the man right on his watch, that is all.

Q. All right then, can we put your testimony down here that he has no duty to warn this man against a hazardous thing that he is doing?

A. No, I didn't say that, I didn't say he did or didn't. Don't get me botched into what he has or has not got. No, I am just—I wasn't there. If I had been there, conditions are different. But, I will say one thing, the first place they were both on a work launch, there was no rating there at all. There is no duties as far as duties are concerned. How about all of the other men that were on there. We assume they all should have told this mess boy what he should do and shouldn't do. The Second didn't rate not one tiny bit more than that mess boy at that time on that launch there. They were just both American citizens and that is it. That is all there was to it. He wasn't connected with the vessel, he was on shore duty, he was free. He wasn't working, so I don't see where this comes into it at all,

(Deposition of Ray H. Robinson.)

what he was supposed to tell him and not supposed to tell him.

Now, if a man had an ax and was holding it over my head I would certainly tell him, get the heck away with that ax, but I don't see where—you are not going to quote me saying what his duty that he should have done this or shouldn't have.

Q. Now Mr. Robinson, we have to assume, I want you to assume certain things to be true. For instance, this Liberty vessel [37] was anchored in the harbor of Sasebo, Japan, lying in quiet water, and the liberty launch came alongside with these men, as far as the testimony goes, and I don't know whether that is complete, but you assume it for my question anyway that the only licensed officer on there was the Second Assistant Engineer.

A. All right.

Q. Now, and that when a man got on to the ladder of the ship, of the Augustin Daly he was on the ship——

A. But the Second wasn't, the only officer was still on the launch.

Q. He was standing on the launch, yes.

A. Yes.

Q. Now, under those circumstances and this man that was climbing the Jacob's ladder had these two bottles as I have described them before, and the testimony also is that he had had some drinks ashore. A. Uh-huh.

Q. Now, if this was a dangerous thing for this Third Cook to do in climbing the ladder in that

(Deposition of Ray H. Robinson.)

way, tell me, did the Second Assistant Engineer have any duty to warn him?

A. I can't see where duty comes into it at all. Supposing he was an oiler, the Second you are speaking of, it wouldn't have made any difference in duties whether he is an oiler, another mess boy or who he was because he was not aboard the [38] vessel at that time.

Q. All right.

A. Now, we might say if the Second was up on the deck and seeing this man coming up bringing liquor, it would throw a different light on it, he would have been an officer of the vessel and he would have been aboard the vessel.

Now, at that time there could be an argument about him fulfilling his duties of saying, you shouldn't be bringing this aboard, but where he stood down below, I think he should have kept his nose right out of the other guy's business, personally.

Q. Then I am right in saying that your testimony is that he had no duty under those circumstances that I just described while he is standing in the launch?

A. That is my belief that he didn't have any duty.

Q. Now, if the Second Assistant had been on the deck at that time, would he have had a duty to warn the man against the negligent manner in which he was climbing the ladder by being encumbered with these two bottles?

(Deposition of Ray H. Robinson.)

A. He would have undoubtedly if he was looking down and seeing the man wasn't able to come up we will say in a safe fashion, he probably would have told him or should have told him to hand down one of those packages, we won't say bottles, maybe they weren't, and how to come up safely. But, he would have been up there to start with, he wouldn't have [39] had nothing to do with that ladder that I can see. He is not in charge with the deck, he has nothing to do with the deck.

Q. I am just trying to find out what a Second Assistant's obligations are to protect members of the crew against injury when he sees them doing something that is endangering themselves.

A. It is his obligation as an officer and as a crew member to attempt to protect the lives of anyone aboard the vessel and the property of the company.

It is a known fact.

Q. That is what I thought was the fact but I wasn't sure until now that you felt that way.

A. But, he is supposed to protect himself too.

Q. That is correct.

A. And to people that don't go to sea, they see things in a heck of a different light.

You are living with say 54 men aboard the vessel. There must be a certain amount of harmony. There is friction between departments. We know we have the color problem which is very sad, it is race discrimination and if you give certain orders, it was for a long time the officer was catching the devil.

Now, this fellow you are speaking of, Mr. Farley,

(Deposition of Ray H. Robinson.)

isn't the aggressive type I will say, never was. He never butted [40] in any disputes with the crew and he just was sort of a happy go lucky guy and had very little trouble.

There is many of them that tend to give orders to everyone and butt in and boisterous and they would probably have done different than Farley did, but he is not the aggressive type and he just live and let live, I presume is what that was.

Mr. Krause: I think that is all, Mr. Robinson. Thank you.

Redirect Examination

Q. (By Mr. Williams): Mr. Robinson, it is your testimony, is it not, that if we assume the Second Assistant Engineer is standing down in a liberty launch alongside a vessel and he observes a Third Assistant Cook attempting to climb the ladder while intoxicated or in a negligent manner such as holding on to packages or bottles while attempting to climb, that he has a moral obligation always to warn him if he sees him doing it?

A. That's right, to help his fellow man regardless of color, creed or anything else. You are supposed to help the other fellow.

Q. And, if he observes him doing this you feel that as a matter of self preservation he should not be immediately under the ladder?

A. That's right, he should be in as safe a place as it is [41] possible to be. That is what I would say.

Q. Now, let us suppose that this Second Assist-

(Deposition of Ray H. Robinson.)

ant Engineer was ten feet away from the Jacob's ladder standing on the liberty launch at the time the man was going up the ladder, the Third Assistant Cook, the manner in which we have described, do you say that he had the duty to protect himself when he is that far removed from the ladder?

A. Well, if he is ten feet away from the ladder, normally he has protected himself.

If he is ten feet away. He must have been on a pretty good sized boat or damn few guys on it.

Q. Suppose he was five feet away, would that normally take him out of the area of danger?

A. No, a man could fall out five feet. He may in his own mind, he probably felt he was out of danger if he was five feet, but it is very possible for a man to hit you. Five feet isn't so far back, but it isn't directly below the man.

Q. Now, first of all, do you feel that a vessel anchored in a harbor—I am asking your opinion on this question, whether a vessel anchored in a harbor, assume further that it will be there for five days, a Liberty vessel, is it your opinion that a Jacob's ladder as compared we will say to an accommodation ladder is a safe means of getting a crew ashore via a Liberty launch and back up to the boat again, keeping in mind the eccentricities of seamen ashore as you have previously [42] described.

Mr. Krause: I make an objection. In the first place the obligation of the ship owner is imposed by law to furnish a safe place, a safe method to get aboard and off of the ship, not the safest method.

(Deposition of Ray H. Robinson.)

Mr. Williams: Well, I don't believe I asked that.

Mr. Krause: You asked if the accommodation ladder was safer than the Jacob's ladder, didn't you?

Mr. Williams: If I did I don't mean to ask that. Read it back.

(Whereupon the Reporter read the previous question.)

Mr. Williams: Are you satisfied with the question then?

Mr. Krause: I won't make the objection. There isn't a comparison being made.

Mr. Williams: I may ask him that later. I don't ask him that at this time.

The Witness: I will say, regardless of what that ladder was there, we will say they were acting in accordance with the law, it doesn't state it must be one kind of a ladder or another, and they both have been used for years and years and years and hundreds of thousands of men have went up and down them, so I wouldn't attempt to say which is the safer or isn't the safer, it is up to the Master of the ship and the company to decide what type of a ladder to put there for the men to come up and down. [43]

As long as it is within the law I can't see where——

Q. Mr. Robinson, when crews return from liberty ashore, is it customary and a usual thing to have either an officer or a sailor on deck watch to observe and perhaps assist their return to the vessel from the liberty launch?

(Deposition of Ray H. Robinson.)

A. Well, I might state that upon many and many occasions that I have come back there has been no one on the deck right at that moment. There is always a deck officer on watch but that doesn't mean that he is supposed to stand right there at that spot. If you have a gangplank, usually if you have a ladder there where the peddlers can come aboard and the likes of that, well there is someone there to check them. But, as far as the assisting part, on many occasions I will say I have come aboard and there hasn't been anyone there to help.

Q. Well, you say that you have observed occasions where there was no one on hand?

A. That's right. There is someone on duty at all times.

Q. Isn't there normally an officer or another sailor there? A. A sailor on gangplank watch.

Q. On gangplank watch. Not necessarily gangplank watch, that would assume being alongside of a dock.

A. Yes. Peddlers coming aboard you got to have them the same as a watchman.

Q. Is there not normally a deck officer or a sailor there to [44] prevent we will say the bringing aboard contraband articles or bringing aboard unauthorized persons?

A. There is someone in the Deck Department assigned to what I say a gangplank watch. There is a gangplank watch, he is there to watch who is coming aboard. Then there is always an officer in charge, but he doesn't necessarily stand right there

(Deposition of Ray H. Robinson.)

by the gangway, but there is someone alerted we will say. He is on duty.

Q. For the return?

A. Night watch or in the daytime there is someone there. They have the regular watches. There is an officer on duty below and on deck at all times.

Q. What about the return to this ship from a liberty launch of intoxicated ship personnel? Now, if an officer is in charge there, does he give some directions or something of that nature as to getting those persons on board the ship safely?

A. If the officer were standing there on the top of the gangway and noticed anything wrong, he perhaps would give orders, but I don't know if there was an officer standing there or not.

I say there was a gangplank watchman or a man on watch, supposed to be on watch. There is a sailor assigned to that, but an officer isn't required to stand by that gangway at all times. On passenger ships you have a quartermaster [45] assigned to this gangway and there is an officer on duty, but not necessarily right at that gangplank.

Q. Well, is it the function of the gangplank watch as you describe it to observe men coming aboard the ship improperly and to do something to correct it if it is necessary, particularly if they are intoxicated?

A. Well——

Q. Not just an officer, but anyone?

A. I might quote this as probably experiences and everything, is the only way I can do, is saying supposing there was a seaman at the head of the

(Deposition of Ray H. Robinson.)

gangplank and his buddy was intoxicated, do you mean that he is going to stool and squeal and holler that the guy is drunk and get him in trouble.

We have a Police state here it seems like you are trying to bring out.

I see you people haven't gone to sea and don't know anything about seamen. You should have seamen trying seamen I think and we would probably get the facts out of the thing.

Q. That may be true, I think you missed the point of my question. It is really whether they should do something to warn or to see that those men get aboard safely rather than get injured trying to come aboard the ship. Isn't that one of their functions as a watch, to try to get the men aboard the ship safely? A. That's right. [46]

Q. It is not unusual that a man comes back intoxicated to a greater or lesser extent?

A. But, we will say about this, we will go back—now, I am probably butting into this but the man has this liquor bringing it aboard. The man up there, this sailor at the top of the gangway, I don't think he is going to yell to him, lay that package or those down, that liquor down aboard that launch.

Q. Don't you think it would be proper for him to say, put them inside of your shirt?

A. It would be very proper for him to state, put them inside of your pocket or your shirt.

Q. Get your hands free?

A. Or anything else, we know that.

Q. I mean, as to his safety, that is all I am

(Deposition of Ray H. Robinson.)

inquiring about as to the safety of the men coming aboard and as to the safety of the other men down in the liberty launch upon whom he might fall if he was ascending the ladder in that manner?

A. All of the vessels and up to today it is preached safety. There is posters of safety, the men are told and taught safety, so every individual crew member, whether it is the Captain or the mess boy has certainly been told that safety is a very cardinal issue aboard a vessel.

Mr. Williams: I have no further questions except for [47] the usual one about the reading and signing of the deposition.

Mr. Krause: I have nothing further either.

Mr. Williams: Mr. Robinson, under the Rules of the Court and the Law of Civil Procedure, you have the right to, after your deposition is transcribed and in typewritten form here, read that deposition over, and if there are any errors to correct them and then sign it or you may waive that right.

I feel sure that the Reporter has taken your testimony accurately and you may do as you wish.

What do you wish to do?

The Witness: My time is very limited and I am sorry if I got a little bit hot headed but I will waive the right to signing this because I am leaving for San Francisco and I know that nobody here is attempting to put me on the spot, and I am trying my best to help everyone involved here. Not being at the scene of this accident, I just can't give a true picture of various things. The condition of the

(Deposition of Ray H. Robinson.)

man, the size of the boat, the weather and there are so many factors in it that could change a little bit, but I have tried to answer the questions to the best of my ability and experience of going to sea.

Mr. Williams: Mr. Robinson, do you also waive the reading it?

The Witness: Yes.

Mr. Williams: You waive both reading and signing? [48]

The Witness: That's right.

Mr. Williams: Thank you very much.

Further Deponent Saith Not

* * * * *

[Endorsed]: Filed July 27, 1955. [49]

RESPONDENTS' EXHIBIT No. 2

DEPOSITION OF GLENN E. MORGAN

* * * * *

GLENN E. MORGAN

called as a witness at the instance of the Respondents, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Kennedy): Would you state your name, please? A. Glenn E. Morgan.

Q. What is your present address, Mr. Morgan?

A. Post Office Box 423, Portland 7, Oregon.

Q. That is your home address?

A. My permanent mailing address, yes.

Q. Presently you are sailing aboard the *Per-
mante Silver Bow*, are you not?

(Deposition of Glenn E. Morgan.)

A. That is right.

Q. Do you know where you are going to be within the next month? A. Not exactly, no.

Q. Will you continuously be going to sea?

A. Yes; that is my only occupation.

Q. Your only occupation is that of a seaman?

A. That is right.

Q. What normal trip does the vessel take?

A. Well, this ship varies on its trips. I might run to Honolulu and from there go back to California or we might go to Mexico. [4]

Q. How long, normally, are you in port when you are in port?

A. Probably 42 hours at the most, normally.

Q. Do you expect to be anywhere in the State of Oregon within the next three or four months?

A. I have no idea what the future operating schedule of this ship is.

Q. Do you expect to remain aboard this vessel during the next three or four months?

A. At the present time I would say yes.

Q. How old are you, Mr. Morgan? A. 49.

Q. How long have you been going to sea?

A. Thirty years.

Q. In what department have you sailed?

A. Deck department.

Q. What license do you hold, if any?

A. Master.

Q. What are you sailing as now, Mr. Morgan?

A. Able seaman.

Q. Shipping is a little tough right now, isn't it?

(Deposition of Glenn E. Morgan.)

A. Yes, sir.

Q. Have you sailed as Master, Mr. Morgan?

A. Yes, sir, I have.

Q. How long was that and when? [5]

A. As a total probably two years over a period of time, which I might have been back to Chief Mate at various times.

Q. How long ago was that that you sailed as Master?

A. The last ship on which I was Master was in 1948.

Q. Have you sailed as Chief Mate? A. Yes.

Q. About how long a total time did you sail as Chief Mate, to your best recollection?

A. I would say five years.

Q. Did you sail as Second or Third Mate, also?

A. No.

Q. You never sailed as Second or Third Mate?

A. No, sir; unless you want to count a two-week trip to Europe as Second Mate.

Q. Are you married? A. Yes.

Q. Mr. Morgan, did you serve on the S. S. Augustin Daly? A. Yes, I did.

Q. In what capacity? A. As Chief Mate.

Q. How long were you aboard the ship?

A. Seven and a half months.

Q. Do you remember when you first went aboard the [6] vessel?

A. It was either the first or second of February, 1952.

Q. Approximately when did you leave the ves-

(Deposition of Glenn E. Morgan.)

sel? A. The 27th or 28th of August, 1952.

Q. Where was the vessel when you first went aboard?

A. Willamette Shipyard, Portland, Oregon; the proper name would be the Willamette Iron and Steel, now.

Q. What type of articles did you sign aboard that vessel? A. Foreign.

Q. Approximately when did you leave Portland?

A. Early in March. I don't recall the exact date.

Q. Where were you bound for?

A. The Far East.

Q. Do you remember what type of cargo you had aboard? A. Lumber but it was military.

Q. I don't understand; was it military equipment?

A. No. It was lumber but it was military equipment.

Q. I see. It was an M.S.T.S. vessel?

A. That is right.

Q. Do you have any deck cargo aboard the vessel? A. Yes, we did—a full deck load.

Q. Was it a particularly heavy deck load or how would you describe it?

A. Yes, it was heavy. The type of lumber would be creosote pilings, heavy squares—timbers—and [7] Army Engineer packaged bridge materials.

Q. Were you carrying a deck cargo over all of the hatches? A. Yes.

(Deposition of Glenn E. Morgan.)

Q. What was your first port after leaving Portland?
A. Sasebo.

Q. Do you remember approximately when you arrived there?

Mr. Kennedy: Unless there is an objection I have the rough log of the *Augustin Daly* covering the period February 9, 1952 and ending April 10th, 1952. I don't believe there is any question about the authenticity of the log, is there, Mr. Williams?

Mr. Williams: No.

Q. (By Mr. Kennedy): I am handing you the log at this time, Mr. Morgan and you can refresh your memory from that.

A. On April 1st, 1952.

Q. You arrived there April 1st, 1952?

A. That is correct; at 2230 hours.

Q. Were you then in an outer harbor or in the inner harbor?

A. We were outside, in the open sea.

Q. Did you then later proceed into the inner harbor?
A. The following morning.

Q. Would that be on April 2nd? [8]

A. April 2nd; that would be correct.

Q. At what time did you arrive in the inner harbor?

A. We did proceed directly into port, but it was after midnight, so that would be on the 2nd.

Q. On April 2nd?
A. On April 2nd, yes.

Q. When you arrived there in Sasebo, how was the vessel handling at that time?

(Deposition of Glenn E. Morgan.)

A. In what way do you mean by handling,—steering?

Q. How as its stability?

A. The vessel was very tender.

Q. What do you mean by being tender?

A. The center of gravity was very high. It was above normal for a stable ship.

Q. Would that cause the ship to do any particular thing—the fact that the center of gravity was high?

A. Yes; it would cause it to list one way or the other.

Q. Would there be any sudden lurches?

A. It is possible.

Q. Were there? A. There were.

Q. Did you have any trouble with the ship in that respect before you arrived at Sasebo?

A. Yes, we did, for a number of days prior to our arrival. [9]

Q. If I understand you correctly, the term “a ship being tender” means that it will take lists at various times?

A. That is right; which is entirely different from the roll of a ship in a sea. With a list, a vessel will lay over to one side and remain there. You still might have a list and be rolling, also.

Q. How much of a list were you taking during these times before you arrived at Sasebo?

A. Do you mean when we would heel?

Q. I was trying to get an idea of how much of a list?

(Deposition of Glenn E. Morgan.)

A. At a time when she would heal over or be in more or less of a permanent——

Q. Let me ask you this: You stated, if I understood you correctly, that the ship was somewhat tender before you arrived at Sasebo, is that correct?

A. That is correct.

Q. How much of a temporary list would you take? A. Well, when she would——

Q. Let's call it a lurch and not more or less a permanent list?

A. When she would list over, the initial list might be as high as twenty degrees. Then she would steady up and maybe at eight or ten degrees she would be permanent for some time. [10]

Q. For some time; and then it would straighten herself out? A. Well——

Q. Or did you always have some permanent degree of list?

A. When the vessel came back to near normal, it was due to transferring oil in the double bottoms of the ship, trying to counteract the list,—eliminate it.

Q. Would it list on just one side or both sides?

A. One; and then later it would go the other way.

Q. Is that also what you mean by being tender—that she lists from one side to the other?

A. That is being tender, yes.

Q. Do you know why the vessel was tender?

A. Due to the fact that we had a heavy deck load,—what we would term a full deck load—plus

(Deposition of Glenn E. Morgan.)

the combination of bad weather, seas coming aboard, the lumber cargo on deck absorbing or retaining quantities of this water, and our consumption of oil and fresh water from our tanks in the bottom of the ship which would have a tendency to increase the weight on top and lessen it on the bottom of the ship.

Q. What about your water?

A. Fresh water, do you mean?

Q. Yes. Were you using water all of the time in the course of your water supply becoming lower?

A. Yes. There was the boiler feed, culinary, bathing and everything.

Q. What difference would the fact that you were taking on seas on the deck cargo have with respect to stability?

A. It would increase your weight above your decks,—above your normal center of gravity.

Q. Do you mean the lumber was getting somewhat waterlogged or something to that respect?

A. It was becoming heavier, yes.

Q. What was the condition of the vessel when you arrived at Sasebo?

A. She was very tender, and we had some list. I don't recall—

Q. Do you want to refer to the log, Mr. Morgan?

A. (Witness refers to log). We didn't even have an entry of the amount of list at the time of arrival.

Q. What is your recollection of the list, Mr. Morgan?

(Deposition of Glenn E. Morgan.)

A. Here it is: "Arrival with a twelve degree port list."

Q. That is what is stated in the log book, is that right? A. That is right.

Q. Is that your recollection of the list, also?

A. The amount I do not recall,—and whether it was port or starboard I do not recall, although I do definitely recollect that we had a list at the time of [12] arrival.

Q. Do you remember how much oil and water you had at the time you arrived?

A. From memory, no; but from the log book I can.

Q. Do you want to take a look at the log book?

A. 2700 barrels of fuel oil which would be approximately four hundred tons; and 206 tons of fresh water.

Q. What is the total amount of oil that one of these ships can take aboard it, Mr. Morgan? I believe this was a Liberty Ship, is that correct?

A. I believe it was a Liberty Ship.

Q. I asked two questions there. Do you remember my first question—how much oil could you take aboard?

A. It was normally known as the oil tanks which is the vessel's double bottoms. I would say it would take approximately seven thousand barrels if you bunkered to capacity in your double bottoms.

Q. What was the purpose of the vessel going to Japan? A. Those were our Naval orders.

Q. Did you discharge any cargo there?

(Deposition of Glenn E. Morgan.)

A. Yes.

Q. What were you discharging?

A. We discharged the deck cargo.

Q. You discharged the total deck cargo? [13]

A. Yes.

Q. Any from the holds, if you remember?

A. Some,—a small amount. If I remember correctly, the packaged bridge material was divided between the holds and the deck. Some of the bridge materials was discharged from the holds.

Q. Who was doing the unloading; was it the crew or longshoremen?

A. Japanese longshoremen.

Q. Did the ship provide shore leave after it arrived at Sasebo? A. Yes.

Q. Do you remember approximately when?

A. There would be shore leave every afternoon; but under military occupation there was a curfew and as near as I can remember at the moment, the curfew was midnight at the dock. It was a launch landing.

Q. How did the crew get ashore?

A. By launch provided by the agents for the vessel.

Q. Did you rig any means of getting on or off the vessel when you arrived at the inner harbor?

A. We put out a type of ladder that would be known as a pilot or Jacob's ladder.

Q. Would you describe the condition of that Jacob's ladder? [14]

(Deposition of Glenn E. Morgan.)

A. The physical condition of it was excellent—the materials—and all in good order.

Q. Was it a standard form of Jacob's ladder, if there is such a thing?

A. One of the standard forms. There are several types.

Q. In your experience of sailing, Mr. Morgan, did they use this type of Jacob's ladder on other ships? A. Oh, yes.

Q. Was it as good as other forms of Jacob's ladders?

A. I would say yes. That is a matter of individual opinion.

Q. Maybe you had better describe how a Jacob's ladder is constructed?

A. You have wooden steps which usually have side pieces—or not usually—they do have side pieces. They have either one flat cross-piece between them—one type; and other type would have two round wooden pieces which are parallel to each other as a cross member. These steps are joined together by rope to form a succession of steps.

Q. How was this Jacob's ladder secured?

A. To the permanent pipe rail on the boat deck.

Q. And then was it secured below, down by the waterline, or did it hang free?

A. It hung free at the waterline, and the lower end was [15] far enough above the water that if a launch came alongside, a launch would come just under the end of the ladder—or the majority of the launches, I should say, the deck would be just un-

(Deposition of Glenn E. Morgan.)

der the bottom rung or bottom step of the ladder.

Q. Was that true with respect to the shore leave launch that was being used?

A. I think the bottom step of the ladder rested on the deck of the launch which was used for shore liberty.

Q. Is it normal and customary or is it not customary to have the bottom of the Jacob's ladder free?

A. You have no means to secure it. It is hanging against the side of the ship.

Q. Then is your answer that it is normal and customary to let it hang free?

A. Yes, it is.

Q. The reason being that you can not secure it, is that right? A. That is right.

Q. Was that Jacob's ladder rigged in the same manner that you have described during the vessel's stay at Sasebo, Japan? A. Yes.

Q. Did the ship have an accommodation ladder aboard? A. It did. [16]

Q. I wonder if you could describe the accommodation ladder?

A. The two heavy side pieces, placed parallel with smaller cross pieces between them, approximately a foot apart in a parallel line, formed a series of steps.

Q. Were the steps rigid or were they flexible?

A. On a Liberty Ship, the ordinary type of accommodation ladder is rigid steps.

Q. Did you have rigid steps aboard the Au-

(Deposition of Glenn E. Morgan.)

gustine Daly? A. We did.

Q. How would you normally regulate this accommodation ladder?

A. The upper end is secured to a platform which folds out from the ship's side to a horizontal position. The upper end of the ladder is secured to this platform by bolts. The lower end would be supported by a chain bridle which, in turn, would be held by a block and pawl from one of the davits.

Q. Did this accommodation ladder have stanchions on it—did it have a handrail?

A. It had removable stanchions and a rope handrail which is threaded through an eye that forms the top of the stanchion.

Q. When you arrived at Sasebo was the ship quite deep in the water,—or will you just describe how [17] the ship was.

A. Yes; we were quite deep. We had a mean draft of 25 feet, I believe.

Q. You may refer to the log book, Mr. Morgan.

A. (Witness refers to log book.) The mean draft was 25 feet and no inches, on arrival.

Q. Does that indicate that she was deeply loaded or just what does it indicate?

A. It would indicate she was deeply loaded because the maximum mean draft would be 27 feet 8¾ inches.

Q. That would be your maximum mean draft?

A. That would be the maximum mean draft, yes.

Q. Does it make any difference when using an accommodation ladder whether the ship is deeply loaded or not?

(Deposition of Glenn E. Morgan.)

A. I would say that would depend upon the type and length of the ladder.

Q. Would it make any difference on the Augustine Daly?

A. With the type of ladder we had there, rigid steps, and with the vessel deeply loaded and the accommodation ladder in place to use, the angle of the ladder would be very close to horizontal. Therefore, with the rigid type of step, any person using that ladder would be walking on the edge of the steps rather than the flat of it.

Q. Would that leave any open spaces between the steps? [18]

A. Yes, it would,—the fixed distance between the steps.

Q. In other words,—and correct me if I am wrong—with the deep draft, the steps in the accommodation ladder,—the steps, themselves, would be more vertical? A. Correct.

Q. And you would be walking on the top part of that step, is that correct?

A. That is right,—the edge of it.

Q. The edge of the step? A. Yes.

Q. Instead of walking on the flat portion, is that correct? A. Yes.

Q. Would it make any difference, Mr. Morgan, with respect to handrails,—the fact that the vessel was deeply loaded?

A. The type of handrails we had for accommodation ladders on the Augustine Daly were short. Although they are set into sockets, which would be

(Deposition of Glenn E. Morgan.)

at right-angles to the side of the ladder, with the small angle from the horizontal you wouldn't get the full benefit of the stanchions. You would be inclined to have to stoop in order to reach the hand-rail.

Q. This type of accommodation ladder that was used on [19] the *Augustine Daly*, is that in general use as far as your experience on that type of ship?

A. Yes. A standard two-section ladder is used for an accommodation ladder.

Q. After your arrival at Sasebo did you have any conferences with the Captain with respect to using the ladder? A. Yes.

Q. Did you discuss the question of whether to use the accommodation ladder or a Jacob's ladder with the Captain?

A. That was part of the discussion.

Q. What was the result of that conference with the Captain,—I mean with respect to what you did after that?

A. We used the pilot ladder instead of the accommodation ladder.

Mr. Kennedy: For the record, Mr. Williams, I believe we are in agreement that pilot ladder or Jacob's ladder is used interchangeably?

Mr. Williams: By this witness, yes.

Q. (By Mr. Kennedy): This Jacob's ladder, was that the only means of ingress and egress to the vessel—that is, coming on board or going ashore?

A. Yes.

(Deposition of Glenn E. Morgan.)

Q. Were the longshoremen using that Jacob's ladder? [20] A. They were.

Q. I wonder if you could describe, generally, the people that came aboard,—did you have a large number of people or a small number, at that time?

A. We had large numbers. There were approximately 75 longshoremen on the ship and then we had port officials—Japanese. We had military and naval port officials and others who were concerned about the cargo,—various branches of the military. We had the ship's crew.

Q. About how many shifts of longshoremen were you using a day? A. Two.

Q. Do you recall an injury that took place to John Farley, a Second Engineer aboard the vessel?

A. I do.

Q. I wonder if you could explain in your own words what you were doing at about the time of the accident and what happened afterwards?

A. I went on watch at midnight to take the remainder of the night watch.

Q. What day was that? You can refer to the log, if you want?

A. (Witness refers to the log.) Midnight, April 5th. My watch would have been from 000 to 0800 hours. [21]

Q. To 0800 on the 6th?

A. On the 6th, yes. After taking the watch, I made a tour of the ship. I then went back to my room and started doing some paper work that I was a little behind on and I was waiting for the

(Deposition of Glenn E. Morgan.)

liberty party to return. About 0040 hours, while in my room, doing my paper work, I heard the launch, so I started down to the gangway. I went through the inside passage where I would meet the returning crew members when they came over the rail onto the main deck. Just before I arrived out on deck, I heard a lot of commotion on the launch. As soon as I was in a position where I could see, I saw Mr. Farley lying on the deck of the launch. Someone told me that he had been injured.

Q. Just a minute. You can't say what someone told you.

A. Oh. So I climbed down into the launch to see what the trouble was with Mr. Farley. And he——

Q. Just what you saw, Mr. Morgan or what Mr. Farley said.

A. Can I include what he said?

Q. You can include what Mr. Farley said.

A. I wanted to know what happened and, as near as I can recall now, Mr. Farley said that he had been hurt and was in considerable pain.

Q. Where did Mr. Farley go after that?

A. I kept him on the launch and sent him back to shore to [22] the hospital.

Q. Did you know exactly when the launch would be returning, each night, or that night?

A. There was never an exact minute due to tidal conditions. The time of departure from the dock was supposed to be midnight but that didn't necessarily mean right on the stroke of the bell. Men boarding the launch at the landing might delay it

(Deposition of Glenn E. Morgan.)

five minutes. There was no exact minute that the launch could arrive.

Q. In other words, I take it your answer is that you didn't know exactly when it was returning?

A. Only approximately.

Q. Would you describe the condition of the lights, that night that Farley was hurt?

A. All deck lights were on which would be lights on the masts, lights of outside passageways and around the deckhouse on the upper decks. I also had a cargo light rigged so that it would shine down on the pilot ladder.

Q. Was the cargo light shining down on the pilot ladder? A. Yes.

Q. These passageway lights that you testified to,—were there passageway lights on near the Jacob's ladder?

A. There was one that would be in that vicinity. I don't recall for sure. I am not sure. [23]

Q. When did the vessel leave Sasebo, Mr. Morgan? A. On April 6th.

Q. What time did it leave on April 6th?

A. Departure was at 11:30 a.m.

Mr. Kennedy: I believe that is all.

Cross Examination

Q. (By Mr. Williams): Mr. Morgan, do you know where the ship took on fuel oil before it left the United States, the voyage of the S.S. Augustine Daly that we have been discussing?

(Deposition of Glenn E. Morgan.)

A. We took our bunkers of fuel oil in Portland, Oregon, prior to departure.

Q. Do you know how many barrels of oil the ship took aboard, at that time?

A. On February 10th we received 3600 barrels. I am in error, there—that was the amount of fuel on hand leaving Portland, Oregon, for Coos Bay, Oregon.

On February 26th we received 4399 barrels of fuel oil.

Q. Can you tell me how many barrels of fuel oil you had when you left the States; what does the log indicate?

A. That day we had over 7000 barrels aboard.

Q. Is that your estimate, Mr. Morgan, or does the log show that? [24]

A. The log shows it.

Q. Exactly what does the log show for barrels, if it does so show?

A. On February 26th, after receiving bunkers, we had a total of 7180 barrels on board.

Q. On February——

A. 26th.

Q. And that would be in Coos Bay, would it?

A. No,—in Portland.

Q. You then returned to Portland, did you?

A. Yes. We departed but we returned.

Q. The ship went to Coos Bay to pick up a lumber cargo, was it?

A. On this February 26th departure we sailed for Yokohama but we had a collision in the river and we returned to Portland for repairs. Our actual sailing for Japan was on March 6th.

(Deposition of Glenn E. Morgan.)

Q. Can you tell me the amount of fuel oil you had on hand on that date?

A. 6830 barrels; and we had 440 tons of water.

Q. For the voyage across it took about 28 days, is that right—or 24 days—how many days would it take?

A. If I remember correctly, it was 24 days and some odd hours.

Q. When did you start having trouble with the list—or [25] the tenderness of the vessel that you have spoken of?

A. As I recall, it would have been around the 20th of March when we first started showing signs of being tender.

Q. That would be about ten days prior to your arrival in Sasebo, is that right?

A. Yes; as near as I can recall.

Q. What did you say the capacity for fuel was on that vessel—around 7000 barrels?

A. Approximately 7000 barrels, yes—using the double bottoms only.

Q. If the deep tanks are used the capacity is very considerably increased, is it not?

A. Yes, it is.

Q. Up to what—11,000 or 12,000?

A. Using number three deeps it probably increased it to 11,000 barrels or so.

Q. Mr. Morgan, is it normal that a ship takes on just enough oil to get it across; is that normal sailing procedure?

(Deposition of Glenn E. Morgan.)

A. Just enough? No. You always have a safety margin.

Q. In addition to that, is it considered to be good seamanship to take enough oil to provide ballast so that your ship will not be tender in riding over—or is a tender ship a perfectly normal thing?

A. No.

Q. It is not a normal thing? A. No.

Q. I believe you stated that the lightness of fuel oil is one of things that caused the ship to be tender?

A. That was one of the factors.

Q. And your fresh water supplies, also?

A. Yes.

Mr. Kennedy: And the heavy deck load, also.

Q. (By Mr. Williams): You say that a tender ship is not a normal way to sail, and a voyage is usually so planned that a ship will never be tender at any time, is that not right?

A. It should not be tender.

Q. If the ship had simply taken on more oil would it or would it not have been tender, if you know—if you had taken on more oil in the United States?

A. Upon our departure from the United States we were at approximately the maximum draft.

Q. And you were loaded with cargo so heavily that you could not take on any more oil, is that correct?

A. We were down to approximately the permissible sailing draft which we could not have taken on any more cargo [27] or oil. We might

(Deposition of Glenn E. Morgan.)

have replenished a couple of hundred barrels which would have been a negligible factor.

Q. Could the ship have come into a port on the way across and fueled up again to provide it with more ballast?

A. Following our routings, as given to us by the Navy, we made no other port.

Q. The Navy directed your routings, is that correct? A. That is right.

Q. Mr. Morgan, are there other ways of stabilizing a ship besides just putting a sufficient amount of oil and water in it and proper cargo loading; are there other methods of preventing tenderness of a ship?

A. On a voyage, you consume oil. To counteract the inclination to become tender, it is a practice that you replace the oil in empty tanks with salt water as ballast.

Q. Was that done on this particular voyage?

A. Not to my recollection.

Q. That would be a factor in the tenderness of a ship, would it not,—balancing with sea water the empty double-bottom fuel tanks?

A. Yes; that would retain the original buoyancy of the ship. [28]

Q. The buoyancy that the ship had when it left?

A. Yes.

Q. Do slack fuel tanks have a tendency to cause unusual tenderness in a ship?

A. If the amount of slackness of a pair of tanks, that is, the same tank—port and starboard—was

(Deposition of Glenn E. Morgan.)

the same, it shouldn't cause any tendency to be tender. If they were unequal, it might give you a slight list.

Q. If, say, a starboard Number 3 tank was hard and the port Number 3 tank was slack, would that have a tendency to cause tenderness in the ship?

A. It would depend on how slack the tank was. If it were full without being pressed up tight—"hard" as you described—it wouldn't amount to any appreciable amount.

Q. If the tank was full as distinguished from being actually quite hard, is that what you are referring to? A. Yes.

Q. So far as you know, the tanks were not ballasted with sea water on the way across?

A. To my recollection, no.

Q. When the ship arrived in port, was there any ballasting with sea water done, then?

A. No; I do not recall. [29]

Q. Mr. Morgan, when you said the Jacob's ladder or the pilot ladder that you referred to was secured to the permanent pipe rail on the boat deck, would you describe a little more fully exactly where that is located?

A. The boat deck is one deck above the main deck of the midship or house section of the vessel. The house sets further inboard from the ship's side. Around the outer part of the boat deck, at the ship's side there is a rail which is approximately three feet high. It is made of pipe and stanchions which

(Deposition of Glenn E. Morgan.)

are secured to the deck, forming a permanent, solid rail.

Q. And that is the rail to which this Jacob's ladder was fastened, was it? A. That is right.

Q. Did the Jacob's ladder from there go over the rail of the main deck or did the boat deck project farther out from the main deck?

A. They are both the same.

Q. Where would men board the Jacob's ladder in leaving the ship?

A. The majority would do so at the main deck level.

Q. Mr. Morgan, do you know if the U. S. Augustin Daly, while in port at Sasebo, Japan, on April 1st [30] to April 6th, 1952 had one or more than one accommodation ladder, if you know?

A. Only one.

Q. Your answer is that they had only one?

A. Only one, yes.

Q. Is it customary for Liberty Ships to carry more than one type of accommodation ladder?

A. Sometimes they carry two,—usually of the same type.

Q. Why do they carry two, if you know?

A. In case of storms,—if one is damaged. Also, it is to facilitate handling. At one dock you might be starboard side to and at another dock port side to.

Q. The type of accommodation ladder which you have described as being aboard the Augustin Daly is unlike the type of gangway ladder which is

(Deposition of Glenn E. Morgan.)

aboard this ship that we are on right now, is that correct? A. They are not the same.

Q. Would you describe in what manner they differ?

A. The gangway on board this ship is what they call a brow gangway. Usually, when in use, it extends at right-angles from a ship to the dock.

Q. This type of accommodation ladder is not used alongside a ship?

A. On occasions they do but very seldom.

Q. The type of accommodation ladder which you referred [31] to, Mr. Morgan, as being aboard the Augustin Daly, in the Port of Sasebo, Japan, in April, 1952, was in two sections, is that right?

A. That is right.

Q. How long was each section?

A. Ten or twelve feet.

Q. You stated that this particular accommodation ladder had very short stanchions so that the handrails were lower than the normal ones, is that correct? A. Yes.

Q. What is the normal height from the tread to the top of the stanchion; is it about 36 inches or more or less or do you know?

A. I would say that the normal or average stanchions for an accommodation ladder are 30 inches, more or less.

Q. 30 inches, more or less? A. Yes.

Q. And the stanchions for this one were less than that?

A. Yes; to my recollection they were.

(Deposition of Glenn E. Morgan.)

Q. Would you say six inches less in that would be a 24-inch stanchion?

A. As near as I can remember, 24-inch might have been what they were.

Q. And that was a factor in thinking why this particular type of accommodation ladder should not be used? [32]

Mr. Kennedy: He didn't testify to that, Mr. Williams.

Mr. Williams: My question will ferret out whether or not he did so testify. I think he did.

Mr. Kennedy: If you want to ask him his opinion as to whether it should be used or not, I think you have a perfect right to ask that, but he wasn't asked that on direct.

Mr. Williams: Mr. Kennedy, the witness answered that there were several factors which to his mind made the use of an accommodation ladder not preferable to a Jacob's ladder. This is one of the factors that was mentioned by him.

Mr. Kennedy: I don't recall that exact testimony, but go ahead.

(The last question read by the Reporter.)

Q. (By Mr. Williams): In Sasebo, Japan?

A. As I understood the question, it was my thinking.

Q. Yes. I meant in that question to state what I thought your testimony had been. I will ask you the question now?

A. I have never made a statement, one way or

(Deposition of Glenn E. Morgan.)

the other, in regard to which ladder should have been used.

Q. Mr. Morgan, do you think that the short [33] stanchions on the accommodation ladder which was aboard the S. S. Augustin Daly in Sasebo, Japan, in April of 1952, rendered that ladder less advisable for use for ingress and egress from the vessel under the conditions then and there prevailing?

A. No, I don't.

Q. It is your testimony then that the short stanchions on the accommodation ladder had no bearing on the situation, at all?

A. I wouldn't say they had no bearing on it, but they were not as satisfactory as some other types of stanchion might be.

Q. Is it your testimony that they were not as satisfactory as a longer type stanchion?

A. As some other type of stanchion.

Q. Mr. Morgan, where on the ship is the platform located to which the accommodation ladder is fastened?

A. Approximately amidships.

Q. Is it even or flush with the main deck?

A. A few inches above the level of the deck, itself.

Q. A few inches?

A. Yes.

Q. What would you say would have been the distance from the main deck to the waterline when [34] the S. S. Augustin Daly arrived in Sasebo, Japan, on April 2nd, 1952, in feet?

A. Approximately twelve feet.

Q. Mr. Morgan, is there any reason why one

(Deposition of Glenn E. Morgan.)

section of the accommodation ladder could not have been used upon the arrival of the Augustin Daly, instead of two, so that the accommodation ladder would have afforded a fairly correct and level means of access to the liberty launch, by using one section instead of two?

Mr. Kennedy: I object to the form of that question as it is going into opinions. It goes far beyond a leading question.

Mr. Williams: It is cross examination, Mr. Kennedy. I am entitled to lead him as much as I wish on cross examination.

Mr. Kennedy: The witness hasn't shown any evidence of being hostile.

Mr. Williams: My understanding of the rules relative to that is that I may lead a witness on cross examination as much as I please without any qualifications as to hostility or anything else.

Mr. Kennedy: Would you read the question?

(Last question read by the Reporter.) [35]

Mr. Kennedy: I withdraw my objection.

A. We didn't use two sections. We didn't use the accommodation ladder.

Q. (By Mr. Williams): This is my question, Mr. Morgan: Is there any reason why one could not have been used instead of hooking two of them together; would that not have increased the angle that you are talking about so that the steps would be approximately horizontal?

A. Two sections in a continuous line would

(Deposition of Glenn E. Morgan.)

make a very small angle, from horizontal. One section would increase that angle.

Q. Go right ahead if you haven't finished your answer. I don't know whether you have finished your answer.

A. I don't know whether I have covered the entire question or not. Would you please read the question?

(Last question read by the Reporter.)

A. That is it.

Q. (By Mr. Williams): You have finished your question, have you? A. Yes.

Q. Do you know if one section of accommodation ladder, on the first day of your arrival in Sasebo, Japan, would have afforded a good and proper means of egress and ingress to and from [36] the vessel to a liberty launch?

A. I don't know if it would have afforded a good means on the day of arrival.

Q. Mr. Morgan, the draft of this vessel changed between the time it arrived and the time it left Sasebo, did it not? A. Yes.

Q. How many feet did it change, would you say? A. Approximately two feet.

Q. Two feet? A. Yes.

Q. Then not a great deal of cargo was unloaded from it—at least, not a great deal in weight?

A. The weight factor would have been 1200 tons, perhaps.

Q. 1200 tons, perhaps? A. Yes.

Q. Was the bulk of the cargo of the S.S. Au-

(Deposition of Glenn E. Morgan.)

gustin Daly discharged elsewhere—in Pusan or somewhere else?

A. The remainder was discharged in another port,—Pusan.

Q. Was the major part of it discharged elsewhere, or was the major part of the cargo discharged in Sasebo?

A. The major part of the cargo was discharged in Pusan.

Q. Do you know if all of the deck cargo had been unloaded by the 5th day of April? That would [37] have been the date of your departure. You may refer to the log.

A. Discharge at Sasebo was completed on April 5th.

Q. Mr. Morgan, it is possible to rig an accommodation ladder, is it not, with planking over the steps and cleats nailed onto the planks as a means of avoiding the steep steps?

A. Yes; it is possible.

Q. Have you seen that done?

A. Yes. I have done it, myself.

Q. Do you know if the Augustin Daly had any list after its deck cargo was discharged?

A. As near as I can recall, the vessel was on an even keel at the time of sailing.

Q. And the discharge of the cargo was completed sometime on the 5th of April, you say, or by then? A. Yes; on the night of the 5th.

Q. Mr. Morgan, about how long does it take to rig a pilot ladder aboard a ship for use?

(Deposition of Glenn E. Morgan.)

A. Not over five minutes.

Q. About how long does it take to rig an accommodation ladder?

A. The time would vary. If the accommodation ladder were in place on the side of the ship where it is used. On a Liberty ship there is a recess it can fold into. Sometimes you might have your [38] ladder back on Number 4 hatch, for stowage. So the time would vary. If it were in place, it would take perhaps half an hour.

Q. And if it were not, about how long would it take?

A. It could extend to two hours.

Q. Is an accommodation ladder generally regulated from the davits as the ship comes out of the water?

A. The lower end of the gangway would be raised or lowered, if necessary.

Q. Whose job is that?

A. A seaman would ordinarily do that by tackle.

Q. One of the deck crew?

A. Several of the deck crew.

Q. Does it take several men to do that?

A. Yes; because it is by manpower.

Q. Mr. Morgan, was there any other time during the voyage of this particular ship, when a Jacob's ladder was used for ingress and egress for the crew, other than at Sasebo?

A. I don't recall.

Q. Was an accommodation ladder used at all other times, so far as you know?

(Deposition of Glenn E. Morgan.)

A. I don't recall.

Q. You don't recall if it was used at all other times? A. No.

Q. How many other ports did you stop in? [39]

A. Do you mean?

Q. After Sasebo — from Sasebo back to the United States?

A. I lost count of them, there were so many.

Q. Will you describe them chronologically as much as you can recall; where? A. Pusan.

Q. From there? A. Yokohama.

Q. From there? A. Pusan.

Q. And from there?

A. It might have been to Massan and then to Yokohama.

Q. Where is Massan?

A. Thirty miles south of Pusan.

Q. You don't recall, at those various ports to which you have referred, whether or not a Jacob's ladder was used for shore liberty for the crew?

A. To the best of my recollection, at most ports one shore liberty was granted when the vessel was alongside of the dock.

Q. Do you recall when you entered the harbor at Yokohama whether or not you came alongside the dock?

A. Which time entering Yokohama? You never went directly to the dock. You would always have [40] to anchor and await clearance from Quarantine and then berthing orders.

Q. When shore liberty was given at Yokohama

(Deposition of Glenn E. Morgan.)

was that sometimes given when the ship was out of harbor and not alongside the dock?

A. I don't recall that we ever had shore liberty while the ship was lying at anchor or not at Yokohama.

Q. When the Augustin Daly was in the harbor at Japan, it was in behind a breakwater, was it not?

A. Not a breakwater. It is a landlocked harbor.

Q. A landlocked harbor? A. Yes.

Q. What was the condition of the water in there; was it smooth or rough?

A. It was smooth.

Q. Mr. Morgan, did you make the decision as to whether or not the accommodation ladder or a Jacob's ladder would be used in the port of Sasebo, or did someone else make that decision?

A. I did not make the decision.

Q. Did Captain Accurso make it; is that his decision to make? A. He made the decision.

Q. He made the decision? A. Yes. [41]

Q. It was not your decision? A. No, sir.

Q. Mr. Morgan, you referred to a cargo light as being fixed aboard the deck of the S.S. Augustin Daly while in the harbor at Sasebo, Japan, so that it would shine down on the Jacob's ladder or pilot ladder that was being used. Will you describe where it was fastened,—where in relation to the gunwale of the ship on the main deck?

A. I don't remember.

Q. I have particular reference, Mr. Morgan, as to whether it was hanging out over the side or

(Deposition of Glenn E. Morgan.)

was about flush with the deck or was back a ways or what?

A. I don't remember the location of it. If I did remember then I would know how it was fastened, but I don't even recall, now, where the light was located,—whether it was forward or aft of the ladder.

Q. Did you talk to a Mr. Potts who was the scullery man aboard the S.S. Augustin Daly, following Mr. Farley's accident? A. No.

Q. You did not talk to him? A. No.

Q. Did Mr. Farley ever tell you how he was injured, if you remember? [42]

A. I don't recall whether Mr. Farley did or not because of the confusion at the time and others who were there and giving me their account of what happened, so I can't recall, now, whether Mr. Farley told me or not.

Mr. Morgan, when crew members return from shore liberty, is it quite a usual and customary thing that they have been drinking?

Mr. Kennedy: If he can answer the question.

Mr. Williams: If he can answer it, yes.

A. I wouldn't say it was the general thing for everybody.

Q. (By Mr. Williams): Would you say it is customary among crew members?

A. Some individuals.

Q. Mr. Morgan, is it also customary among seaman returning from shore liberty that packages

(Deposition of Glenn E. Morgan.)

and purchases are brought with them—particularly when they are in a foreign country?

A. Foreign purchases, yes.

Q. How are those usually brought aboard the ship,—are they loaded separately or does the individual crew member bring his own purchases with him?

A. As a rule, individuals would bring their own possessions aboard.

Q. On the accommodation ladder which the [43] Augustin Daly had in Sasebo, Japan, in April of 1952, was it rigged with double handrails, if you know, or with single handrails?

A. I believe it was single.

Q. Do you recall definitely one way or another?

A. No.

Mr. Williams: I have no further questions.

Redirect Examination

Q. (By Mr. Kennedy): Mr. Morgan, I believe you were asked or perhaps you testified that the ballasting of the vessel would be some factor with regard to the tenderness; would this be the only factor as far as the vessel was concerned?

A. It would reduce the tenderness somewhat.

Q. Would it be the sole factor or just one factor—would your deck load and your draft have some effect on it?

A. In smoother weather, the deck load would start drying out which would reduce the center of gravity and help to stabilize the ship.

(Deposition of Glenn E. Morgan.)

Q. You mean if you hadn't been taking so much water on the deck? A. Yes. [44]

Q. I believe you testified that you did not recall whether the ship was ballasted during the trip?

Mr. Williams: I object to that as not being his testimony. I believe he stated that not to his knowledge was it ballasted.

Mr. Kennedy: I have a note saying that at one time he did not recall.

Mr. Williams: I believe your testimony was that to your knowledge it was not ballasted. Go ahead.

Q. (By Mr. Kennedy): Mr. Morgan do you know whether the ship was ballasted or not during the voyage? A. No.

Q. Of your own knowledge, you do not know, is that your answer?

A. That is my answer, yes.

Q. You also testified that the Jacob's ladder was secured up on the boat deck, if I remember correctly, which would be one deck above the main deck? A. That is right.

Q. Would you explain why it was secured up on the boat deck?

A. The pilot ladder we used was a long ladder which would be suitable for use when the ship was [45] light or had no cargo aboard. It was all in one section. If we had used it on the main deck, because of the deep draft of the ship the excess portion of the ladder which was not used would be in the narrow passageway between the rail and

(Deposition of Glenn E. Morgan.)

the house and would obstruct the passage. So I had the ladder put over where it could be made fast on the pipe rail on the boat deck.

Q. Could it be secured easier or would it be less secure by securing it on the pipe on the boat deck?

A. It was more secure,—well, if I may back up on that, please. It would have been secure if I had had it rigged on the main deck but it was easier to secure it on the boat deck, in addition to having a clear passage.

Q. Would it have been safer to secure it one place than the other?

A. No; other than impeding the passageway. If I had secured it on the main deck—

Q. It would have impeded the passageway?

A. That is correct.

Q. I take it from your answer that it would have made no difference as far as the safety factor is concerned, being secured one place or the other?

A. No.

Q. Is it usual or customary for a vessel to have [46] more than one accommodation ladder aboard the vessel?

A. Some ships carry only one ladder and others carry two. That is a matter of policy with the owners.

Q. Have you been aboard other vessels that have the stanchions shorter than thirty inches?

A. I think I have seen shorter stanchions.

(Deposition of Glenn E. Morgan.)

When or where I can't recall but I am almost sure that I have.

Q. Are these stanchions on an angle at all on the accommodation ladder?

A. At right angles to the sides of the ladder.

Q. If the accommodation ladder is placed in more of a horizontal position does that make the stanchions stand more upright on that type of ladder?

A. If the ladder were in a horizontal position, the stanchions would be in a vertical position.

Q. The stanchions would be in a vertical position? A. That is right.

Q. What position would the stanchions be in if the ladder was more in a vertical position?

A. More to the vertical of the ladder and more to the horizontal of the stanchions.

Q. From your experience in sailing, Mr. Morgan, what would be your opinion with respect to whether that accommodation ladder aboard that vessel was a seaworthy accommodation ladder or [47] not; in other words, was it a seaworthy accommodation ladder? A. Yes.

Q. I believe you testified, also, that these shorter stanchions were one factor why the accommodation ladder was not used; do you recall that or is that your testimony?

A. Will you state that again, please?

Q. That is, the fact of the accommodation ladder having shorter stanchions was one factor why

(Deposition of Glenn E. Morgan.)

that accommodation ladder was not used, was that your testimony?

A. I don't recall saying that that was a factor.

Q. Was it a factor? A. No.

Q. It wasn't necessarily a factor? A. No.

Q. What factors were involved in not using the accommodation ladder?

A. Tenderness of the ship.

Q. Did the prospective position of the accommodation ladder have anything to do with it whether being in a vertical or a horizontal position?

A. No.

Q. Then the draft of the vessel didn't have anything to do with it?

A. No. It did contribute to it. [48]

Q. It did contribute to not using the accommodation ladder? A. As near as I can recall.

Q. I don't know if I understood your answer or not, with respect to discharging the cargo. Did you complete the discharging during the day or was it during the night of April 5th?

A. During the night. The stevedores finished all cargo work and left the vessel at 2030 hours.

Q. You were also asked various questions, Mr. Morgan, as to whether a Jacob's ladder or an accommodation ladder was used at ports after you left Sasebo; do you recall that? A. Yes.

Q. The conditions with respect to tenderness of the vessel and the draft of the vessel, did they prevail at other ports?

A. Draft, but not tenderness.

(Deposition of Glenn E. Morgan.)

Q. Tenderness did not?

A. No. We did not have that situation for the remainder of the voyage.

Mr. Kennedy: I believe that is all.

Recross Examination

Q. (By Mr. Williams): Mr. Morgan, it is [49] unusual, is it not, that a vessel with a deep draft is tender? Let me continue the question a little more—as contrasted with a vessel with a light draft; and that is the type that is usually more tender, is it not, more so than a vessel with a deep draft, other factors being the same?

A. No; a light vessel would not be as tender. She would roll. By tenderness you mean she takes a list and holds it. A light vessel would roll but she would always come back.

Q. What you have reference to is this, Mr. Morgan: Assume that a vessel is not as heavily loaded and therefore is not as deep in the water, but the other factors pertaining to it are the same such as that it has a fairly heavy deck load and is loaded high up and has fairly empty fuel tanks and water tanks, isn't it true that a vessel with a lesser draft would be more inclined to be tender, if all of those other factors were the same?

Mr. Kennedy: I believe he has answered that question.

Mr. Williams: I don't know if he has or not.

A. I am a little confused on your question. Will you please read the question back to me again?

(Deposition of Glenn E. Morgan.)

(Last question read by the Reporter.)

A. If the other factors were the same——

Q. (By Mr. Williams): Except for the draft of the vessel?

A. Yes. It wouldn't make any difference—or it wouldn't make a great deal of difference on the draft. If you would transpose your weight, it would change your center of gravity.

Q. Your answer then is that it wouldn't make any substantial amount of difference, is that right?

A. Under the same conditions, you would still have a tendency to become tender, irrespective of the draft.

Q. Mr. Morgan, what bearing, if any, does the tenderness of the ship have upon the use or non-use of an accommodation ladder versus a Jacob's ladder, assuming that both ladders are fastened amidships, under the conditions existing in Sasebo Harbor, at the time of the accident referred to?

A. That was the first time I ever experienced that situation.

Q. Do you mean as to a tender ship in a harbor?

A. Tenderness in that degree?

Q. I may be repeating myself—but if I am I don't think you have completely answered my [51] question. What bearing would tenderness have upon the use of an accommodation ladder as distinguished from a Jacob's ladder or the advisability of using either an accommodation ladder or a Jacob's ladder under the conditions prevailing in Sasebo, Japan, at the time referred to?

(Deposition of Glenn E. Morgan.)

Q. Tenderness did not?

A. No. We did not have that situation for the remainder of the voyage.

Mr. Kennedy: I believe that is all.

Recross Examination

Q. (By Mr. Williams): Mr. Morgan, it is [49] unusual, is it not, that a vessel with a deep draft is tender? Let me continue the question a little more—as contrasted with a vessel with a light draft; and that is the type that is usually more tender, is it not, more so than a vessel with a deep draft, other factors being the same?

A. No; a light vessel would not be as tender. She would roll. By tenderness you mean she takes a list and holds it. A light vessel would roll but she would always come back.

Q. What you have reference to is this, Mr. Morgan: Assume that a vessel is not as heavily loaded and therefore is not as deep in the water, but the other factors pertaining to it are the same such as that it has a fairly heavy deck load and is loaded high up and has fairly empty fuel tanks and water tanks, isn't it true that a vessel with a lesser draft would be more inclined to be tender, if all of those other factors were the same?

Mr. Kennedy: I believe he has answered that question.

Mr. Williams: I don't know if he has or not.

A. I am a little confused on your question. Will you please read the question back to me again?

(Deposition of Glenn E. Morgan.)

(Last question read by the Reporter.)

A. If the other factors were the same——

Q. (By Mr. Williams): Except for the draft of the vessel?

A. Yes. It wouldn't make any difference—or it wouldn't make a great deal of difference on the draft. If you would transpose your weight, it would change your center of gravity.

Q. Your answer then is that it wouldn't make any substantial amount of difference, is that right?

A. Under the same conditions, you would still have a tendency to become tender, irrespective of the draft.

Q. Mr. Morgan, what bearing, if any, does the tenderness of the ship have upon the use or non-use of an accommodation ladder versus a Jacob's ladder, assuming that both ladders are fastened amidships, under the conditions existing in Sasebo Harbor, at the time of the accident referred to?

A. That was the first time I ever experienced that situation.

Q. Do you mean as to a tender ship in a harbor?

A. Tenderness in that degree?

Q. I may be repeating myself—but if I am I don't think you have completely answered my [51] question. What bearing would tenderness have upon the use of an accommodation ladder as distinguished from a Jacob's ladder or the advisability of using either an accommodation ladder or a Jacob's ladder under the conditions prevailing in Sasebo, Japan, at the time referred to?

(Deposition of Glenn E. Morgan.)

Mr. Kennedy: Are you asking him for an opinion?

Mr. Williams: I am asking him for his answer to it.

Mr. Kennedy: I object to the question if you are asking for his opinion.

Mr. Williams: I am asking him for his opinion.

A. In this particular instance aboard the S.S. Augustin Daly in Sasebo, the ship being in such a tender condition, and early in the day she had changed from a port to a starboard list, it was possible that there might have been a recurrence. And we only had one accommodation ladder, which was on the starboard side. So if a launch had been alongside the vessel at the ladder and the ship had taken a list over the other way, at that time, someone might have been injured.

Q. (By Mr. Williams): How would someone [52] have been injured under those circumstances?

A. Well, perhaps someone might have been boarding or leaving the vessel.

Q. To what extent would the sudden shift of the vessel under those conditions as you have described have been dangerous to men attempting to board a Jacob's ladder,—a sudden shift of the vessel as you have spoken of?

A. In using a Jacob's or pilot ladder, you have to use both hands in order to progress either up or down.

Q. That is the difference between the two?

A. And an accommodation ladder, if everything

(Deposition of Glenn E. Morgan.)

is stable or in a neutral state, a lot of men are inclined to use only one hand on the handrails and would be more apt to be thrown off balance on an accommodation ladder.

Q. Mr. Morgan, you said that the ship shifted on some day; what day did you have reference to?

A. I was going to say on the day of our arrival, but our arrival was on the first. It was at entrance into the port.

Q. That was on the 2nd?

A. On the morning of the 2nd, she had suddenly shifted.

Q. Do you know if the reason that the ship suddenly shifted was because of something that was being done aboard the ship, at that time, or [53] whether the ship shifted of its own volition, without any influence aboard the ship?

A. I believe they were transferring oil, at that time, but I am not positive, — in an effort to straighten the ship up towards an even keel.

Q. And in so doing, it shifted over to the other side?

A. I think that was what happened; I am not absolutely certain, though.

Q. That would be a normal occurrence with a tender ship, would it not—if you try to ride a list, it would go over the other way?

A. It happens. It is not always a normal occurrence.

Q. Would you expect that this ship would take a sudden shift thereafter if something were not

(Deposition of Glenn E. Morgan.)

being done aboard it such as transferring oil from one tank to another?

A. Or discharging cargo while a ship was in that same tender condition.

Q. Mr. Morgan, with the list which the ship had, that list could have been held where it was on one side, could it not?

A. By discharging cargo evenly, you could hold a ship in any position, but on this Augustin Daly, when we arrived in Sasebo we were carrying a full deck load. It would be impossible—or it was [54] impossible to discharge anything other than the deck load because it extended over the hatches, also, and if we had had that list and tried to let go our chain lashings securing the deck load, the deck load would go over the side. So in order to start discharging, you had to take part of the list out, at least, to where you would be able to release your chain lashings.

Q. After the ship shifted, was that a shift from a port to a starboard list?

A. I would have to refer to the log to answer that.

Q. You may do so.

A. (Witness refers to log book.) There apparently is no record in the log of the vessel shifting from the twelve degree port list which we had upon arrival to a starboard list which, as I recall, was in the morning at approximately 9:25. But there is a record at 2000 hours of the ship listing from six degrees starboard to twelve degrees port.

(Deposition of Glenn E. Morgan.)

Q. On what day is that?

A. On April 2nd. That was during discharging operations,—the shift at 2000 hours.

Q. Is it your recollection that the ship shifted several times or just once?

A. Twice, that day.

Q. Twice that day? A. Yes. [55]

Q. Have you seen a Liberty ship do that before in harbor? A. Not before that incident.

Q. Do you know whether any of the tanks of the Augustin Daly were ballasted with seawater while in port? A. No, I do not know.

Q. You don't know whether they were or were not? A. I do not know.

Q. You don't know either way? A. No.

Q. If empty fuel tanks had been ballasted with seawater——

Mr. Kennedy: I object to that. He has already testified to the fact that he does not know whether it was ballasted or not. If you want his opinion on some hypothetical facts, I think your question should be phrased that way.

Mr. Williams: Very well.

Q. (By Mr. Williams): Mr. Morgan, assuming that there were empty fuel tanks on the Augustin Daly while in the port of Sasebo, Japan, on April 2nd, 1952, in your opinion, would the tenderness of the ship have been corrected if those empty tanks had been ballasted with seawater?

A. It would have been corrected according to

(Deposition of Glenn E. Morgan.)

[56] the amount of ballast that was taken into the tanks.

Q. If as much seawater were let in as fuel had been consumed, on the voyage over, would that have corrected the tenderness of the ship?

Mr. Kennedy: I object to that unless you assume the other conditions—the draft of the vessel and the heavy——

Q. (By Mr. Williams): We will assume all of the conditions that you stated existed, that is, the mean draft of 27 feet of the vessel and the heavy deck load; if it had been ballasted with just as much seawater as fuel that had been consumed on the way across, would that have corrected the tenderness?

A. Without a mathematical calculation I wouldn't say if it would correct it to the same degree that existed when we left Portland, Oregon.

Further Redirect Examination

Q. (By Mr. Kennedy): When a vessel is tender, does it have a tendency to do what I believe you or other seamen refer to as “flopping” instead of a permanent list; does it go back and forth quite rapidly?

A. Speaking of being tender, usually it means that a vessel flops from one side to the other. [57]

Q. It flops from one side to another rather than having a list for some time?

A. No; it would be true on both.

Q. You mean both conditions would exist?

(Deposition of Glenn E. Morgan.)

A. Yes.

Q. Would the fact of discharging deck cargo as you were doing in Sasebo, Japan, have any effect on the tenderness of the ship?

A. Gradually it would straighten her up, — maybe not to an exact keel, but it would reduce the tenderness and make her more stable. I might qualify that a little more, too, by saying if the discharging were equal on both sides.

Q. Were you discharging from both sides?

A. Yes.

Mr. Kennedy: Mr. Morgan, you have a right to read, correct and sign this deposition if you wish to do so or you can waive that right, without the necessity of reading and signing the deposition.

The Witness: Because of our uncertain schedule, and the difficulty of perhaps locating me at any given moment, I will waive the right to sign the deposition.

(Witness excused.)

Concluded.

* * * * *

[Endorsed]: Filed March 10, 1955.

RESPONDENTS' EXHIBIT No. 3

DEPOSITION OF WILLIAM J. ACCURSO

* * * * *

WILLIAM J. ACCURSO

called as a witness by the respondent, being duly sworn by the notary public to tell the truth, the

(Deposition of William J. Accurso.)

whole truth and nothing but the truth, testified as follows:

Direct Examination

Q. (By Mr. Kennedy): Would you state your full name, please? A. William J. Accurso.

Q. Where do you presently reside?

A. 1212 Sutter Street, Vallejo, California.

Q. What is your occupation? A. Seaman.

Q. Do you hold any particular license? [2]

A. Unlimited master's license.

Q. How long have you been going to sea, Captain? A. A little over 15 years steady.

Q. Steady?

A. Yes, a little over 15 years straight. I haven't done anything else.

Q. You haven't done anything else? How long have you held your master's papers?

A. Going on the 11th year now.

Q. How long have you actually sailed as master?

A. Approximately four or five years, five years about; four to five years.

Q. Are you working at the present time?

A. No.

Q. What are your plans for the future?

A. I figure on—I have an offer of a job possibly the end of the month, a skipper's job at the end of the month.

Q. Is there any registration procedure for catching another ship?

A. Well, I mean for master or captain the

(Deposition of William J. Accurso.)

companies have the option of hiring. Other than that, you would go through the union. I am registered down at the union also.

Q. Are your present plans to obtain another berth as soon as possible? A. Yes.

Q. Do you expect to be in the United States within the next few months?

A. That would be hard to say. I don't think so.

Q. I take it you don't know exactly where you are going to be? [3]

A. No. I'm single and my position—tomorrow I might take a job and just leave.

Q. Now, were you master of the S.S. Augustin Daly? A. I was at one time.

Q. When did you go aboard that vessel?

A. About the first week in January, 1952.

Q. And where was the vessel at that time?

A. I don't remember now. It was in Portland. It was in the shipyard in Portland. I don't know.

Q. In order to expedite this, I have the rough log of the S.S. Augustin Daly for the period commencing February 9, 1952, to and including April 10, 1952. I believe there is no question about the authenticity of the log.

Mr. Williams: None.

Q. (By Mr. Kennedy): I will hand you this log, Captain, and you can refresh your memory from it, if necessary.

A. This is February 9 and 10. I was on there before that. I think it was at the Portland dry-

(Deposition of William J. Accurso.)

docks, but I'm not sure right now. Anyway, it was in some shipyard.

Q. What type of articles were the crew members on? Foreign or coastwise?

A. At what time?

Q. When you took over the ship.

A. When I took over the ship it had just come from lay-up fleet, just being outfitted.

Q. And did you later sign foreign articles?

A. We did.

Q. Now, approximately when did the vessel [4] leave the United States?

A. I'd have to look at the log.

Q. Go ahead and look at the log. I have reference to any foreign port.

A. It finally sailed for the Far East on March 6th.

Q. Of 1952? A. Yes.

Q. And what type of cargo did you have aboard, Captain?

A. As close as I recall, we had creosoted piling, timbers and bridge materials.

Q. Did you have any deck cargo, Captain?

A. We had a full deck load.

Q. What do you mean by "a full deck load"?

A. Just completely from fore to aft, all available space and up fairly high.

Q. It covered all the hatches?

A. Covered all the hatches.

Q. Did it cover part of the deck?

A. Covered the whole main deck.

(Deposition of William J. Accurso.)

A. And about how high was the cargo?

A. I'd say as far as I recollect right now it was about eight to nine feet high. You know it's kind of ragged like. I'd say around eight feet, as far as I can remember.

Q. Would it come as high as the boat deck or anywhere near it?

A. Just about, yes, just right up to the boat deck. That would be around eight and nine feet. [5]

Q. What did your deck cargo consist of?

A. That was it. Did I say the other cargo before?

Q. I don't think you broke it up. What did the deck cargo consist of?

A. Creosoted pilings, bridge material and timber, but the cargo itself in the vessel was various sizes of lumber.

Q. Were you operating under the Military Sea Transport Service?

A. Yes. The vessel was chartered by MSTs.

Q. Was that military cargo, Captain?

A. Yes.

Q. And where were you bound for?

A. At that particular time, the Far East. That is, the sailing orders were for the Far East.

Q. You didn't know exactly what port you were bound to?

A. No. We get radio diversion and orders at sea.

Q. Now, when you left Portland, Captain, what would you say with respect to whether you were heavily loaded or not?

(Deposition of William J. Accurso.)

A. We were heavily, fully loaded.

Q. Do you remember about what your draft was?

A. I'd have to look it up in the book.

Q. Well, were you anywhere near being maximum loaded? A. Yes. We were close to it.

Q. Close to being maximum loaded?

A. Yes.

Q. Now, did you encounter any difficulty on this voyage over to the Far East?

A. Yes, we had some rough weather. [6]

Q. About how far out were you when you hit the rough weather?

A. I'd have to look at the log book.

Q. I take it that you recall that you did hit rough weather? A. Yes, sir.

Q. Did you sustain any damage? A. Yes.

Q. What damage did you sustain, do you remember, generally?

A. I'd have to look at this again.

Q. Why don't you take a look at the log? Is there any list of damage that you sustained?

A. Yes.

Q. And where is that contained in the log? What entry? A. March 27.

Q. As far as you recall, Captain, is that a complete list of the damage that you sustained aboard the vessel? A. As far as I recall.

Q. For this particular date there——

A. March 22nd, itemized through the 26th or 27th. We had two or three days of bad weather.

(Deposition of William J. Accurso.)

The 23rd and 22nd we had gale force weather, heavy weather.

Q. Did you have any difficulty with your deck cargo during that time?

A. As I recall now, we did shift a little bit up forward.

Q. Some shifting? A. Yes.

Q. Did this storm make any difference with respect to the weight of any of the deck cargo? [7]

A. Well, yes. It increased the weight of the deck load for the simple reason it got impregnated with water, waterlogged. It absorbed moisture. Of course, with a storm you always have a little rain too, so that kind of waterlogs the cargo. It doesn't have a chance to dry out.

Q. Now, did you have any further difficulty with the vessel during that voyage?

A. No. I don't know what you mean by "difficulty."

Q. Well, did anything unusual occur?

A. We started getting close to Sasebo, Japan, and we started—the ship started to get tender. That isn't any serious difficulty.

Q. And what do you mean by the ship becoming tender, Captain?

A. It has a tendency to not right itself immediately. When it starts to roll or—the action of the sea, it wants to have a tendency to go to one side or the other side off even keel. It doesn't recover itself right away.

(Deposition of William J. Accurso.)

Q. Would it remain in any permanent list from that also?

A. It could; not under all circumstances.

Q. Well, I don't know if I quite understand about this tenderness feature.

A. That is a term to explain the action of a vessel.

Q. Well, is the vessel inclined to go over suddenly? Is that one of the incidents?

A. The idea of tenderness, it will go to one side [8] and hang there. In other words, when the center of gravity meets the geographical center of the vessel, the weight itself is so close, it takes longer to right itself back or the controlling force is to pull itself back.

Q. Well, was it going from side to side like that?

A. It was upon arrival yes, in Sasebo, Japan.

Q. When did this tenderness first occur?

A. Well, we knew it was coming say half way across, but it wasn't bothering us.

Q. It was just tender in a small degree?

A. Yes.

Q. Is that your answer?

A. Yes. The vessel would still right itself. It just started to take longer and longer as we continued to use more water and fuel.

Q. Did it become any particular problem before you arrived in port?

A. No, except possibly the last day. At that time the vessel took a list, being tender, and stayed there.

(Deposition of William J. Accurso.)

I talked to the chief engineer about that. I told him to concentrate the weight on one side to more or less—in otherwise, to keep it that way; better to keep a list than flop it back and forth. By flopping back and forth, you are liable to snap the chains and the lashings over the deck load, by the sudden lurch.

Q. Then were you able to maintain a permanent list then?

A. As far as I can recall. She flopped once in a while. Through the action of the sea, she'd go [9] over once in a while. We tried to maintain her.

Q. She would flop on the other side every now and then? A. Yes.

Q. This flopping from one side to another, is that an incident of being tender?

A. That is being tender.

Q. What was the condition of the vessel when you actually arrived in Sasebo, Japan, Captain?

A. We were outside and we couldn't get in that night. We had a permanent list then. She flopped over to one side quite a bit.

Q. You can refer to the logbook, Captain, if you wish.

A. Twelve degree port list.

Q. The logbook indicates a 12 degree port list upon your arrival at Sasebo, Japan?

A. Yes, April 1.

Q. And that was what date, Captain?

A. April 1.

Q. What time did you arrive there?

(Deposition of William J. Accurso.)

A. We got there 2230, arrived outside, outer harbor.

Q. That was in the outer harbor?

A. Yes, outside of Sasebo.

Q. Then did you proceed to the inner harbor?

A. Yes. Wait a minute; yes, we proceeded in and anchored in the inner harbor. They've got here, "Anchored at 0024 in the morning of April 2nd."

Q. And that was in Sasebo, Japan, is that correct, Captain? A. Right.

Q. And did you discharge any cargo there?

A. Yes. [10]

Q. What were you discharging in Sasebo?

A. As far as I can remember, we discharged the complete deck load and a little bit out of the hold. I forget now.

Q. Well, was the ship flopping any while you were in the harbor or was it still tender?

A. Yes. It still flopped that night. That day it flopped a couple of times. I don't see it logged in here. It flopped while they were working cargo too, discharging cargo.

Q. Can you remember about how many times it flopped?

A. I'd say, as close as I can remember, three or four times.

Q. And how big a flop was that?

A. According to the logbook here, the day of arrival here we got anywhere from 12 degrees, six to 12. In other words, six starboard to 12 maximum port.

(Deposition of William J. Accurso.)

Q. What day was that? A. April 2nd.

Q. Is that a notation of a permanent list or would you go over further?

A. That is settled in a permanent position. When she lurches, it could possibly go a little more, say as much as 15 and 20 degrees, and settle out. You see, here she is handing from 6 starboard to 12 port. Evidently it favored the port side; trying to concentrate the weight on that side, to keep it from flopping. If you concentrate more weight on one side, it has a tendency to stay there. [11]

Q. Did you have any conversation with the chief mate with respect to gangway or other means ingress and egress to the vessel while you were in port? A. Yes, the mate, he asked me——

Mr. Williams: Just a moment now. Off the record.

(Off the record discussion.)

Mr. Williams: My objection is that I object to the Captain testifying concerning any conversation between him and the mate. He may testify to what occurred, but I object to him stating what the mate's conversation was to him.

Q. (By Mr. Kennedy): Captain, let me rephrase it.

Did you have a conversation with the chief mate with respect to what form of ingress and egress would be provided for the ship?

A. Yes. He asked me——

Q. Just a minute. Your answer is yes, you did have a conversation? A. Yes.

(Deposition of William J. Accurso.)

Q. Where did this conversation take place, if you recall?

A. Either near my office or up on the bridge. I forget.

Q. Is it a normal custom for the chief mate to ask you whether a gangway or other form of ingress and egress will be provided?

A. Usual circumstances, no.

Q. What would be the usual circumstances?

A. He would just go ahead and do it. That's his job.

Q. Did he come directly to you on this occasion?

A. Yes.

Q. And did you discuss the question of what form of gangway would be put over the side?

A. Yes.

Q. What did you tell the chief mate?

A. As close as I can recall now he wanted to know if I wanted an accommodation ladder. I made it very definite that I did not. The gist of the conversation was, I told him to put out a pilot ladder instead.

Q. Is a pilot ladder the same thing as a Jacob's ladder? Are the terms used interchangeably?

A. Yes.

Q. Why did you tell him that, Captain?

A. I felt it was more safer to use a pilot ladder, or Jacob's ladder, as you call it.

Q. Why?

A. Due to the fact that we are going to discharge the deck load and the cargo, and the vessel

(Deposition of William J. Accurso.)

listing back and forth, and due to our draft and freeboard, it was in my mind, more unsafe, for safety reasons, not to use the accommodation ladder.

Q. Let me go back a little, Captain. Do you know why the ship was tender, what circumstances made it tender? A. I do.

Q. What were those circumstances?

A. Well, with the deck load plus the added weight up there and coming across the ocean, of course, we used a great amount of our fuel and water from the lower end of the vessel which [13] raised our metacenter towards the center of gravity. To make it very simple, if you go far enough you could turn the vessel over. Due to that fact, the vessel was tender.

Q. Did the heavy deck cargo have anything to do with it?

A. It did. As soon as we discharged the cargo, she would right herself. In other words, that would lower your metacenter much more below your center of gravity which has a tendency to stiffen up the vessel. In other words, the leverage on the fulcrum would tend to set itself right up, in an upright position.

Q. Now, if I understood your testimony correctly, you felt that it was safer to use a Jacob's ladder instead of an accommodation ladder because the ship was tender, is that right?

A. That is one of the reasons, yes.

Q. Are there any other reasons?

A. Well, the working of cargo, discharging of

(Deposition of William J. Accurso.)

cargo. With these long pilings, in that case, the Army wanted to float them ashore, our army, American Army. It was their job to take this cargo. It was their cargo, so consequently it was decided to float these pilings—I forget how long they were—these creosote pilings and make rafts around the vessel and float them ashore, you know, dropping them in the water or any other means and they were using barges up alongside. Due to the flopping back and forth, that was another reason why we didn't want to use this accommodation ladder. There was a possibility of flopping back and forth. [14] There was that possibility of throwing the ladder out and throwing you over with it. In most cases, most of the men including myself very seldom use two hands on the man ropes.

Q. You mean on the accommodation ladder?

A. Yes.

Q. What difference did it make that these pilings were in the water?

A. Well, when they're in the water it doesn't make any difference. The idea is of getting them from the vessel to the water. The cargo is in the air and that's where the danger is involved.

Q. With the flop, it might injure someone on the accommodation ladder?

A. It could, yes. You can't tell which way anything is going to carry. The probability was there, let's put it that way.

Q. Were there any other reasons that you used

(Deposition of William J. Accurso.)

the Jacob's ladder instead of the accommodation ladder?

A. Our freeboard available, which I don't remember at the time that we had—I should say, not available, the pilot ladder would either be too much on a horizontal or towards the horizontal and the steps would be pointing down, because the steps are rigid.

Q. Maybe you had better——

A. That is, the pilot ladder would be in two sections.

Q. Why don't you first describe the accommodation ladder?

A. This particular one, it had two sections. [15] I don't know, between 12 or 13 feet. I don't know exactly what each section was, the length, right now.

Q. In two sections? A. Right.

Q. And were the steps rigid? A. Rigid.

Q. How much freeboard did you say you had at that time?

A. I think it was around 12 feet. I'm not sure.

Q. What do you mean by freeboard?

A. The height of the main deck right to the water line.

Q. Is the accommodation ladder run from the main deck down to the water? A. It does.

Q. I wonder, Captain, if you could draw a diagram of what you mean by these steps being horizontal and the steps pointing in a certain way?

A. That's the ladder, we'll say (indicating). The

(Deposition of William J. Accurso.)

steps are rigid, about a 45. I assume it's just like that, with 45. You know what I mean? To get the maximum efficiency on this ladder, this type of an accommodation ladder, the vessel should be—these are built for when it is empty actually. You have got the increased freeboard. It would hang in this position (indicating). As the vessel is loaded, this keeps coming up and it points up and down. In other words, your feet are hitting the edge instead of the flat of the step. In other words, it is like the step of a house, you would be just raising one end where you would have a tendency for your leg to slip through. This is open on the bottom.

Q. Do you have space between these steps?

A. We do. [16]

Q. Now, if I understand you, using the two sections, the ladder would be in somewhat of a horizontal position? A. Yes.

Q. And that was because of your deep draft?

A. Yes.

Q. And that would result in the steps being more vertical, is that right?

A. That's right. They'd be nearly like that (indicating).

Q. The steps themselves? A. Yes.

Q. With the result that you would be walking on the top of those steps? A. That's right.

Q. Is there enough open space between the steps for someone to fall through?

A. Well, possibly a skinny guy could. They could go through.

(Deposition of William J. Accurso.)

Q. Is it possible to rig that ladder in one section?
A. Yes.

Q. Could you have rigged it in one section in this particular case?

A. If we decided to rig it, yes.

Q. What would the result have been there?

A. In that case, the length of that one section was approximately the same as the freeboard, so consequently it would be hanging up and down and then you would have a worse situation. It would be almost straight up and down, as far as I can recollect right now.

Q. Captain, is that the type of an accommodation ladder that is used generally on Liberty [17] ships, if you know?

A. That's the type that was put out with all the Liberty ships when they originally built them, you know, the Government specifications during the war.

Q. And was that one of the reasons that you did not want to use the accommodation ladder?

A. That was one of them.

Q. Captain, this is a hypothetical question and there might be some objection. If you had a different form of accommodation ladder or more freeboard, would you have used an accommodation ladder there under the circumstances that were then existing?
A. No.

Q. Why wouldn't you?

A. I figure it was safer the other way, using the pilot ladder.

(Deposition of William J. Accurso.)

Q. Because of the reasons that you testified to before?

A. Yes, and also this type of accommodation ladder has a short stanchion, shorter than normal and it's made well enough. The length of the stanchions are fine under the conditions where it is suitable for them. You know what I mean? Say on a lighter freeboard or less cargo on the vessel, it is enough. When the angle is increased beyond a 45, that would lay along the ship or decrease, accordingly you would have to stoop over or it is right on top of you, because the stanchions are rigid and you can't change their positions. They are in the same position all the time, so it would be unsafe from that standpoint. [18]

Q. Are those stanchions any different or are they the same that are used on that type of accommodation ladder? Are they the standard type of stanchions?

A. For that ladder?

Q. For that type of ladder.

A. Yes.

Q. What was the condition of this Jacob's ladder that was used, Captain?

A. Good condition.

Q. When did you get that ladder? Was it aboard when you went aboard?

A. We got it with all the rest of the stores.

Q. In Portland?

A. Yes. It was new or practically new, as far as I can remember. If it wasn't new, it was practically new.

(Deposition of William J. Accurso.)

Q. In your opinion was it in seaworthy condition? A. Absolutely.

Q. What about the accommodation ladder? Was that in seaworthy condition? A. Yes.

Q. Do you know where the Jacob's ladder was rigged?

A. Well, I just got through looking in the log-book and I'm sure it was on the port side. I'm not positive.

Q. On the port side? A. Yes.

Q. Was it rigged on the main deck or elsewhere?

A. Well, it was secured on the main deck. It was secured on the boat deck right past the main deck, right down to the water.

Q. It would have to be secured right opposite the midshiphouse? A. Yes. [19]

Q. Could you have it secured in any other place other than opposite of the midshiphouse?

A. Yes. That was the best and logical place for it.

Q. And why was that?

A. Well, that's where you would normally be coming to, the midshiphouse, and it would be safer because it would be out of the way of the hatches.

Q. And the cargo?

A. And the cargo. On every ship it's always near the midshiphouse or the quarters, you know, where you would have your form of going to and from shore, either by gangway or ladder or whatever you used.

(Deposition of William J. Accurso.)

Q. Do you know what it was secured to to the boat deck?

A. Well, as far as I can recollect it was secured to the railing. That's where they're always secured, most cases, on any ship.

Q. Do you know why it was secured on the boat deck, Captain? What I am interested in, I was wondering if it made any difference whether it was secured on the main deck or on the boat deck.

A. Well, the ladder there would be more than you need. It would be one piece, of course, and it would be laying down on the main deck and also whoever would be coming aboard, is just as easy to get off the main deck or the next deck up—it's eight or nine feet. It's just as easy to take two more steps up and get off on the boat deck. For myself, that is what I always used to do.

Q. If it was secured on the main deck, would [20] it have cluttered up the passageway anyway?

A. It would, yes.

Q. Because of its length? A. Yes.

Q. What people, in general, were coming aboard the vessel during the stay in Sasebo?

A. The officers and crew, ship's agents, stevedores, port officials, Army and Navy officers.

Q. Do you have any idea of the average number of people who would be coming aboard and leaving every day?

A. I assume that the stevedores used it plus ship chandlers too. I'd say it could be possibly used by 100 men a day.

(Deposition of William J. Accurso.)

Q. Now, did you keep this Jacob's ladder there all the time that you were in Sasebo?

A. As far as I recall, yes.

Q. You didn't put out the accommodation ladder?

A. No.

Q. Was everybody using this Jacob's ladder to come on board and to leave?

A. As far as I know, yes, unless the stevedores rigged something themselves, which I'm sure they didn't. I'm not sure they didn't.

Q. As far as you know, there wasn't any other means rigged?

A. No.

Q. Now, when was the crew given shore leave, Captain?

A. In this case, in this particular case, they were unrestricted as to shore leave as long as they didn't have duties to perform. [21]

Q. Like standing regular watches?

A. Yes. When they were off watch, they were free to go anytime they wanted.

Q. How would they get to and from shore?

A. By launch, power boat, motor boat.

Q. And by whom was the launch provided?

A. There was a regular launch service for the crew set up four or five times a day and besides that there are various other launches coming for ship's business that the crew could go ashore with them anytime they showed up. They could bum a ride with them.

Q. Did they have to come back at any certain time?

A. No.

(Deposition of William J. Accurso.)

Q. Was there any curfew there in Japan?

A. As far as I can recollect, on the curfew, you're supposed to be off the streets between 12:00 and 6:00. There's nothing stopping anybody from staying ashore.

Q. Could they stay ashore as long as they wanted?

A. As long as they were off the streets between 12:00 and 6:00.

Q. As far as you're concerned—as far as you were concerned, as long as they stood their watches and did their regular work, could they stay ashore as long as they wanted to? A. Absolutely.

Q. Did you have a launch running to the vessel in the morning? A. Yes. [22]

Q. About what time would that return?

A. I don't remember the exact time, but it usually figures around breakfast time. The change of the watch is around 8:00 o'clock. In Sasebo it probably would be coming back around 7:00 in the morning, leave the shore at 7:00 in the morning and possibly leaving the ship at 8:00 in the morning, changing of the watch for anybody going, it would be around 8:00 in the morning.

Q. Was that your first port, Captain?

A. After leaving Portland, the first foreign port.

Q. The first port from Portland?

A. First foreign port from Portland.

Q. Did you make any ports in the United States before leaving on this foreign voyage?

A. Yes, Coos Bay, if I recall.

(Deposition of William J. Accurso.)

Q. From there where did you go?

A. Back to Portland.

Q. And then from Portland to Sasebo?

A. Yes.

Q. Did you go up and down this Jacob's ladder, Captain? A. Yes.

Q. Did you have any difficulty? A. No.

Q. Had you ever been in Sasebo harbor before this particular time?

A. I wasn't at anchor there, no.

Q. Have you been in the Orient many times previous to this?

A. Well, I don't know what you would call many. I have been there before. [23]

Q. Do you know about how many times? What I am getting at, I was wondering if you were familiar with any general practice in the ports in the Orient?

A. Yes. I am familiar with them.

Q. Is there any practice with respect to the use of an accommodation ladder or Jacob's ladder?

A. Well, if you are only in for a short time, usually it's a Jacob's ladder and when the weather is bad you always use a Jacob's ladder, because the accommodation ladder is more dangerous. The shore boats have such a hard time maneuvering. These Japanese launches—we don't have our own shore boat on the vessel. I'd say at anchor you'd use the pilot ladder just as much as the accommodation ladder, if not more.

Q. In ports in the Orient?

(Deposition of William J. Accurso.)

A. Yes. One of your main obstructions of using the accommodation ladder is the barges alongside when you're working cargo on both sides of the vessel. There's always a shifting back and forth of them. It invariably happens, due to your change of draft, unless you got a man on continuous watch—then you slip up once in a while—the barge will rap it or the tow boat and then you haven't got anything. In most cases the ships—very few carry two of them, at least the ones I have been on.

Q. Do you know, Captain, what lights were provided, if any, near this Jacob's ladder?

A. Not offhand I can't recall, but I'm sure there was sufficient lighting. [24]

Mr. Williams: I object to that. I think the answer of the witness should be stricken as not responsive to the question and not constituting an element of fact, but a conclusion based on no facts.

Q. (By Mr. Kennedy): What lights were available near where this Jacob's ladder was rigged, Captain?

A. The lights around, outside the midshiphouse and along the passageways, a light from the—I'm thinking of another ship. Anyway, them lights would be there and you always rig whatever you consider is necessary as far as cargo lights are concerned. They are anywhere from three to five hundred watt lights.

Q. Do you know whether or not a cargo light was rigged?

A. I'm sure there was one rigged.

(Deposition of William J. Accurso.)

Q. Do you know, yourself? A. Yes.

Q. Did you see it there? A. Yes.

Q. About how large a bulb would that be?

A. I don't remember whether—some have five in there, five 100-watt bulbs or clusters. Some of these mobile bases, either 300-watt or 500, so I'd say it would be a minimum of 300 watts of lighting and a maximum of five. This is the usual cargo light. That particular one, I do not remember.

Q. Do you remember an accident that happened to John Farley aboard the vessel?

A. I remember that I was told about it. I was not there at the time. [25]

Q. Were you aboard the vessel at that time?

A. No.

Q. What was John Farley aboard the vessel?

A. Second assistant engineer.

Q. Do you know who was in the launch at the time of the accident, Captain?

A. Not except from the reports that were made. That's the only ones that I know.

Q. Do you know if the first mate was aboard the vessel?

Mr. Williams: He has already answered the question.

Mr. Kennedy: I will agree. Let me change the question.

Q. Do you know who was aboard the vessel and who wasn't aboard the vessel at the time of the injury? A. No, I don't know.

Q. You don't know for sure yourself?

(Deposition of William J. Accurso.)

A. No.

Q. When did you leave Sasebo, Captain? You can refer to the log.

A. Same day of the accident, I know that. April 6.

Q. What time on April 6?

A. I've got 11:30 here in the logbook.

Q. How long would it take the launch to go from the dock to the ship, Captain, approximately?

A. That varies with the current and the individual operator of the launch. They always got a little reserve speed. It averaged around 40 or 45 minutes.

Q. Could you tell exactly when it would be returning to the ship? A. No. [26]

Q. I wonder if you could describe briefly this particular launch.

A. I can't because I don't remember.

Q. Would you have any idea of the length?

A. No, because the launch service was a little company there and they had three or four different launches and I don't even know if they are the same. Most cases they average around 35 or 40 feet, I guess, around 40 feet. That would be my guess.

Mr. Kennedy: I believe that is all.

Cross Examination

Q. (By Mr. Williams): Captain, you said, I believe, that you have held master's papers for

(Deposition of William J. Accurso.)

approximately 11 years and you have sailed as a master for about four or five? A. Yes.

Q. Was the S.S. Augustin Daly the first Liberty ship that you had taken out at that date?

A. No.

Q. How many had you taken out prior to that, if you know? A. Four others.

Q. Four other Liberty ships before February of 1952?

A. Yes, four actually made ocean voyages, four or five. I have been on numerous ones, just around the Bay Area here, getting them ready for sea when the companies take over.

Q. Did you start sailing as a master in the year 1950? A. No. [27]

Q. You said you had sailed as a master for about four or five years.

A. Intermittently. I have sailed mate in between. I first started sailing master in 1944, as young as I am.

Q. What is your age now?

A. Thirty-three.

Q. And do you still sail now only as master or sometimes as mate?

A. I have sailed chief mate and master, depending on the money involved, providing I get the job.

Q. Captain, when you left Portland I believe you stated that was on March 6th, on the Augustin Daly bound for the Orient?

A. According to the logbook, yes. I can't remember all these dates and times now.

(Deposition of William J. Accurso.)

Q. I believe that is the date you stated you took from the logbook.

Mr. Kennedy: It's in the logbook.

Q. (By Mr. Williams): You said your ship was fairly heavily loaded then? A. Yes.

Q. Were you well loaded with fuel at that time?

A. What do you mean by that?

Q. Were you fully loaded with fuel?

A. No.

Q. Were all your double bottoms filled with fuel oil? A. No.

Q. How many barrels of fuel oil did you have on there?

A. I'd have to look at the log. [28]

Q. You might as well look at it.

A. It says 6,830 barrels of fuel upon departure.

Q. And was that on March 6th?

A. That's right.

Q. And this voyage was to take about how many days, Captain? What was it anticipated it would take?

A. You mean that particular leg of the voyage?

Q. Yes, from Portland to the Orient.

A. Well, I didn't know where we were going. You get your orders two or three weeks hence, we'll say, so I was figuring between 30 and 35 days. I didn't know.

Q. Did you have enough fuel for 30 or 35 days?

A. Yes.

Q. You said you had a fairly heavy deck cargo? Was that your testimony, Captain? A. Right.

(Deposition of William J. Accurso.)

Q. And that consisted mostly of bridge materials, timbers and creosote pilings? A. Yes.

Q. That was primarily the deck load?

A. Yes, as far as I remember.

Q. What are the bridge materials made of?

A. Heavy timber.

Q. Creosoted?

A. No. It's one of these for the Army Engineers, you know. It's kind of prefabricated. All you did was throw it together, like trestle stuff and supports.

Q. What do you think most of the cargo was that was on the deck, the majority?

A. It was all lumber or timber of some sort.

Q. Would you say that it was mostly bridge materials or mostly creosote pilings or mostly——

A. Gee, I don't remember that.

Q. Now, you have stated I believe that you had some bad weather around the 22nd to the 27th of March? A. Yes.

Q. Is that the type of weather you would normally anticipate at that time of year? A. Yes.

Q. You were taking seas on your main deck, is that what you are indicating?

A. Yes, a little. I don't remember how much.

Q. Is that where this water came from you were referring to? A. That and rain, spray.

Q. Most of the water that gets on the main deck, does it run off the sides through the scupper?

A. Yes.

Q. It would only be the absorption of the mate-

(Deposition of William J. Accurso.)

rial itself you referred to that would add to the weight? A. Yes.

Q. Creosote piles, do they absorb much water, Captain? A. Yes, they absorb it.

Q. You think they absorb a lot?

A. I don't know.

Q. Do you know how much heavier your deck load became as a result of the water? A. No.

Q. It is true, is it not, Captain, that it would amount to a fairly minimal amount increased weight? A. I wouldn't say that.

Q. You think it is a considerable amount?

A. Yes. [30]

Q. What would you estimate, Captain? What additional weight would you estimate from that water? It would just be an absorption of water into the timber you're speaking of?

A. Yes. Here is the thing there that I have to explain to you. Some of that was——

Q. I would prefer if you would answer.

Mr. Kennedy: Let him answer the question.

Mr. Williams: I want him to answer the question first and then explain later. You can answer and then offer your explanation.

The Witness: You want me to state how much?

Q. (By Mr. Williams): If you are able to do so. If you can't estimate, say so.

A. I'd say between 50 to 100 ton, in my estimation.

Q. Did you want to offer an explanation, Captain? A. Yes.

(Deposition of William J. Accurso.)

Q. Please do so.

A. This cargo was loaded in the rain. It was wet to start with or it had been laying out on the docks and there was snow on it, this bridge material and some of the other stuff, as far as I can remember, timber and everything else and pilings too. When you load that compactly, the sun can't get to it and it absorbs that weight there in a period of a couple of weeks and it will absorb it, plus the seas, plus the rainwater and everything else. I'd say at least 50 to a hundred ton. [31]

Q. In the 50 to a hundred tons, Captain, you mean increased weight by reason of the fact that these materials were heavier before they were even put on the ship itself? They were laying on the dock?

A. Plus the fact too of the rain and——

Q. Are you estimating 50 to a hundred tons of water was absorbed by these materials just on the voyage across or prior to that?

A. Just on the voyage across.

Mr. Kennedy: I'm going to object to this. You're arguing with the witness.

Mr. Williams: I merely want his estimate.

Mr. Kennedy: He testified to it. You go ahead and ask him questions. You're arguing with him now.

Mr. Williams: I think not, counsel. I am only going to ask questions to attempt to clarify it.

Q. Is it your testimony then Captain that the seas and the weather on the way across added 50

(Deposition of William J. Accurso.)

to a hundred tons of additional weight to the deck cargo? Is that your testimony? I just want to be sure what it is. A. I'd say around 50.

Q. Around 50? Not 50 to a hundred, but around 50? A. Yes.

Q. Captain, you stated, I believe, that about half way across on your voyage the ship started to get tender, is that correct?

A. Well, we could notice it.

Q. Notice tenderness develop, is that it? [32]

A. That's it.

Q. And you stated that that was no serious difficulty? A. No.

Q. When did it become a serious difficulty?

A. It never did become what I consider a serious difficulty. It became very apparent the day before we arrived, let's put it that way. She started flopping back and forth, but before she was just listing and a slow recovery.

Q. The action of the seas would make it list?

A. Not the action of the sea. It would be rolling.

Q. But you mean it would take more exaggerated rolls?

A. The ship is—it is the sea that forces the ship to roll. A list is when the ship itself develops a cant to one side or the other.

Q. Captain, is it customary to have a tender ship? Is that normal sailing procedure?

A. No.

Q. Is that unusual? A. No.

Q. It is not unusual?

(Deposition of William J. Accurso.)

A. No, not with lumber cargo, absolutely not.

Q. Is it normal to keep a slight port list on a ship when she's under way? Is that normal?

A. No.

Q. You would say it is normal to keep a ship on an even keel? A. Yes.

Q. Captain, what would be the weight of this ship with its cargo on at the time it left Portland?

A. I wouldn't know. [33]

Q. You have no idea?

A. I would have to figure it all out.

Q. Can you tell from the log? A. No.

Q. Can you tell the amount of cargo weight from the log?

A. Well, sometimes you can and sometimes you can't. I don't know whether they put the weight in here or not. I can't find it in here.

Q. Captain, who determines how much fuel should be taken aboard a ship when it leaves and who determined it in this case?

A. In this case MSTS determined it.

Q. The amount of fuel? A. Absolutely.

Q. You did not?

A. No. In this particular case the charterer, MSTS, is the one to decide how much fuel you are to carry.

Q. Do you mean your employers?

A. No, MSTS.

Mr. Kennedy: That is calling for a legal conclusion. I will object to that.

(Deposition of William J. Accurso.)

Mr. Williams: I will withdraw the question. I don't want to get into that anyway.

Q. Did you state Captain that the double bottoms were not fully loaded with fuel oil?

A. As far as I can recollect, yes.

Q. There were several empty double bottom compartments into which fuel oil could have been placed?

A. I don't know how many, but there could [34] have been a few placed. It wasn't up to me.

Q. Is that the reason this ship became tender on the way across? Is one of the reasons because it didn't have enough fuel oil to start with?

A. No, we had enough fuel oil to start with.

Q. Captain, do you try to plan a voyage so that the ship will never become tender at any time?

A. You can calculate that.

Q. You calculate it so that it will become tender?

A. No. I say you can. In fact, it's quite often done. This has nothing to do with the voyage we are talking about, but for your intercoastal ships, take ships taking lumber to the east coast, they get down to their load-line. You can't load any further. You say that you're full and down, maximum load. They will leave port and come down to Los Angeles here and by the time they get down here to Los Angeles, they're tender. They know they are going to be tender, but it's not unseaworthiness.

Q. Is the ship difficult to handle when it is tender, Captain?

(Deposition of William J. Accurso.)

A. Well, it's not difficult, but you can notice it. It affects your steering, but it isn't difficult. Just affects your steering a little bit.

Q. What methods are available, Captain, to correct tenderness on the ship while she's on the voyage? A. At sea, in other words? [35]

Q. Yes, at sea.

A. Fill your double bottoms.

Q. With sea water?

A. Well, that is available, yes.

Q. Well, that would be ballasting? A. Yes.

Q. And would you normally ballast with sea water the empty double bottom compartments in which there was no fuel? Is that the way it would be done?

A. If there was no possibility of having fuel in there, yes.

Q. Captain, what do you refer to if there is no possibility of having fuel in there? What do you mean by that?

A. They are all available except one of them tanks—your double bottoms, on a steamer, is usually feed water for your boiler. That's got to be fresh water. That's understood. They are all fuel tanks. We are assuming part of them are empty and that you are going to put fuel in, but you never want to put salt water unless you absolutely have to where you're going to contaminate the fuel oil, which consequently doesn't do your boilers any good either.

Q. Captain, can you tell me of your own knowl-

(Deposition of William J. Accurso.)

edge, did you give any orders to ballast this ship on the way across when she started to become tender? A. I did not.

Q. Did you in port, in Sasebo?

A. To ballast them?

Q. Yes, to ballast with sea water? A. No.

Q. Why not?

A. Because we were going to discharge the deck load and it would ultimately correct itself.

Q. If you had taken some sea water aboard as [36] ballast on the way across you would not have been tender when you arrived in Sasebo, would you?

A. That's correct. I want to qualify that statement. When you take salt water ballast—I didn't know until I got in there—we were under a radio curtailment. We couldn't open up unless I considered it important. That was Navy orders. When you put ballast in the fuel oil tanks, you contaminate—the oil mixes with the water a little bit. I was under the assumption I was going to get more fuel oil in Sasebo, which ultimately I did not. Consequently, you have to dump that ballast at sea, because you can't contaminate coastal or water in the harbor. Even if I had ballasted, I would have probably dumped it out before I got in with the assumption I was going to take fuel oil on, but I didn't know until the Army and Navy decided they wouldn't give me any.

Q. Captain, I believe you said that on the last

(Deposition of William J. Accurso.)

day, that would be on the day of April 1, wouldn't it, before your arrival——

A. Around midnight, April 1.

Q. On that day, the tenderness became quite acute?

A. Yes.

Q. Did the ship flop that day?

A. Yes.

Q. What was that due to? The roll of the sea? Would the roll of the sea cause it to go one way?

A. Would the roll of the sea—with these other factors it would cause it to flop. In other words, your tank was slack. The movement of the sea moves the vessel and with your slack tanks and [37] with the ultimate result that the fuel oil or whatever it is, plus all the other actions, you know, it would make the ship flop rather than a slow easy roll. It would just make it flop.

Q. Captain, as a full compartment and double bottom, as that supply is consumed, is it normal practice to consume it entirely in one section before you start on another or do you consume it equally from all of them so you have all your tanks slack?

A. No. You keep your tanks pressed up, in other words full. In other words, normal procedure, they use one tank at a time.

Q. Do you know if the ship had several slack tanks shortly before you arrived at Sasebo and upon your arrival at Sasebo?

A. Right now, I don't remember but we probably did.

Q. Did you consult with the chief engineer on

(Deposition of William J. Accurso.)

that matter? A. Yes.

Q. What was his name, do you remember?

Mr. Kennedy: You have got it in the logbook, I think.

The Witness: Fred Grull.

Q. (By Mr. Williams): Did you order him to do anything with regard to those tanks?

A. Well, as far as I can recall, I told him to keep them pressed up. I didn't want to ballast them either.

Q. You didn't want to ballast them with sea water? [38] A. That's right.

Q. Didn't Mr. Grull?

A. Absolutely not. That's against all engineers.

Q. It's against all engineering principles to ballast with sea water?

A. Yes, unless it's absolutely required for the seaworthiness of the vessel. Here's what they don't want. The engineers don't want to contaminate their fuel oil. In time, when they do use it, and with that part of the water in the oil, it fouls up their boilers and condensers or anything else. I am not an engineer. They don't want to do it. They don't like to do it. Of course, if they are ordered, they have to do it.

Q. Nonetheless, it is quite commonly done, is it not, ballasting with sea water?

A. Not in the fuel tanks, no, sir.

Q. Where do you ballast with sea water?

A. Usually, you can, on some ships you have just tanks especially for ballasting.

(Deposition of William J. Accurso.)

Q. Do you have them on a Liberty?

A. Not actually for ballasting. It all depends on what you would want to call it. There is deep tanks in the vessel. Sometimes they are hooked up for fuel too. In this particular case I don't remember whether it was hooked up for fuel or for ballast or for fresh water. I do not know.

Q. Captain, you have stated I believe that there [39] were tanks, double bottom compartments with fuel oil when you left Portland. A. Yes.

Q. Could sea water be ballasted in those tanks?

A. If I deemed it necessary.

Q. And you didn't think it was?

A. No. There was danger of the ship turning turtle. That is the only time I would consider it.

Q. When you arrived in Sasebo Harbor itself, you started discharging deck cargo immediately?

A. I don't remember if it was immediately.

Q. You said the ship flopped three or four times. Was that in Sasebo in the harbor?

A. Yes.

Q. Did it all occur the same day? A. Yes.

Q. Would that be the first day you were in Sasebo? A. Yes.

Q. That would be April 2nd? A. Yes.

Q. I believe the ship arrived at midnight, Captain? A. Yes, the 2nd.

Q. What was that flopping due to?

A. The ship being tender.

Q. Captain, there was no roll of the sea to precipitate the ship from one side to the other when

(Deposition of William J. Accurso.)

you were in this harbor? A. No.

Q. It was smooth water? A. Right.

Q. What caused it to move from one side to the other?

A. It was probably the weight that was moved, [40] you know, when we were starting to discharge the cargo.

Q. Do you have charge of the discharging cargo to the extent that you can order where it can be taken from first? A. Yes.

Q. What is your normal practice with regard to that? Do you try to see it is discharged evenly from the deck? A. Well——

Q. Insofar as possible.

A. Under certain circumstances, yes.

Q. Did you in this particular case?

A. In this case I discussed with the mate. Normally I'd leave it up to the chief mate. In this case I did.

Q. Did you attempt to see that that was done, it was taken off evenly?

A. I attempted to try to get them to concentrate on one side.

Q. Was that on the port side?

A. I don't remember now. I don't remember, but to try to get the weight off opposite to the way she was listing so it would increase the tendency to maintain that—so she won't flop back. Then once you get below a point where you knew she wouldn't flop any more, you would keep taking it off evenly.

Q. If I understand you correctly, Captain, your

(Deposition of William J. Accurso.)

idea in unloading would be to attempt to unload in such a way as to hold the existing list?

A. Yes.

Q. And then when it got to a point where you would determine it would not flop, then to discharge it evenly? [41]

A. Yes, or whatever would be easier for the stevedores or everybody concerned.

Q. Captain, about how long does it take to set up a Jacob's ladder or a pilot ladder?

A. Five to 10 minutes, depending on where it is stowed and where it is——

Q. Do you recall this particular Jacob's ladder that you referred to? Do you recall what it looked like?

A. Yes.

Q. Did you order your chief mate to affix it to the boat deck or to the main deck or did you leave that to the mate's discretion?

A. To his discretion.

Q. And it was fixed to the permanent pipe rail on the boat deck, was it not?

A. Well, as far as I can recall.

Q. That would be about amidships on the ship?

A. Yes.

Q. And are the sides of the ship fairly straight, as far as up and down? Are they relatively vertical at that point?

A. Yes.

Q. Would the Jacob's ladder hang down in such a manner as to touch the edge of the main deck also when it was secured to the boat deck or would it be out from it a little bit?

(Deposition of William J. Accurso.)

A. I don't remember now, but I think they had it secured to the main deck too. They take a turn on that too.

Q. You don't recall that now? A. No.

Q. Of course it is not secured at the bottom?

A. No.

Q. By the 5th, the majority of the cargo had [42] been discharged then, had it not?

A. According to the logbook, the deck load was pretty completely discharged by the 5th, that night of the 5th.

Q. The ship was no longer tender at that time?

A. No, sir.

Q. Then these considerations with regard to the use of accommodation ladder or Jacob's ladder, as far as the tenderness of the ship, did not prevail on the 5th? A. Say that again.

Q. The conditions concerning the feasibility of using the accommodation ladder or the Jacob's ladder that you previously referred to, as far as the tenderness of the ship was concerned, that did not prevail on the 5th of April? A. No.

Q. Because the ship was no longer tender?

A. That's right. It did prevail as far as cargo working was concerned.

Q. How much would you say the ship came out of the water as her cargo was unloaded, how many feet? Would you know?

A. For 1,200 ton of cargo, that was the deck load—50 ton to an inch, approximately. The cargo taken off, it would be around two feet. Then we

(Deposition of William J. Accurso.)

no doubt took fresh water there which increased the weight back again, so I'd say a maximum change of arrive and departure wouldn't be more than a couple of feet. I could look it up in the logbook.

Q. If you can find it, Captain.

A. That would be [43] the departure date, wouldn't it? Here you are. We arrived on April 1 with a mean draft of 25 feet and we sailed with a mean draft of 23.03, so that's about a foot and nine inches. It's less than two feet change even with 1,200 or more ton of cargo discharged. We took a few hundred tons of fresh water.

Q. Did you determine, Captain, that you should put out a pilot ladder instead of a Jacob's ladder—pilot ladder instead of an accommodation ladder?

A. Yes. That was my decision, yes.

Q. And I believe the reason you stated for that is the ship was tender and—

A. Mainly for safety reasons.

Q. For safety reasons. You felt that it was a matter of safety?

A. In other words, I assumed it was safer to use that pilot ladder than the accommodation ladder under the extenuating circumstances at the time.

Q. That was the sole reason, one of safety, is that right? A. Primary reason.

Q. And do you know on this Jacob's ladder, do you recall the length of the stanchions on it?

A. The Jacob's ladder, you said?

Q. I mean the accommodation ladder.

A. They are normally short, around two feet.

(Deposition of William J. Accurso.)

Q. Twenty-four inches?

A. Approximately. I don't recall.

Q. That is shorter than they are on other type ships, is [44] that your testimony?

A. Yes, I'd say so.

Q. Had you ever seen an accommodation ladder with stanchions this short before? A. Yes.

Q. Was that a factor bearing on your decision not to use the accommodation ladder?

A. That was one of them. There was a lot of little ones; on account of the angle involved——

Q. Do you know if this accommodation ladder had one handrail or two, if you know?

A. I think it had two.

Q. But do you know?

A. I don't know. I'm sure it had two. They are always rigged for two.

Q. Do you know if it had two fitted onto it?

A. I'm pretty sure it did.

Q. Do you know how long each section of that accommodation ladder would be, the two sections, each one?

A. I'd venture to say, a guess, it would be around 11 or 12 feet a piece.

Q. Do you think your guess is pretty close to accurate on that, or do you know? Do you think you are within one foot or five feet on your estimate? A. Within a foot or so.

Q. The total ladder, when it is hooked up would be 22 to 24 feet? A. About that.

Q. And that ladder, you say, would not provide

(Deposition of William J. Accurso.)

a good angle down to the water for people to use?

A. Under these conditions?

Q. Under these conditions. A. No. [45]

Q. I don't mean to interrupt you. I believe you stated you had about 12 feet of freeboard?

A. Yes.

Q. That increased as you unloaded the ship?

A. A foot and 10 inches, or whatever it was.

Q. Do you feel that that afforded a poor angle? What would you say would be the best distance to use the accommodation ladder correctly?

A. On a Liberty ship, on this type of ship and this particular type of gangway?

Q. Yes. What is the maximum effective freeboard distance to use this type of an accommodation ladder? A. Well, the angle that that——

Q. How many feet of freeboard should you have which you might consider to be perfect or very nearly so?

Mr. Kennedy: If he knows.

Q. (By Mr. Williams): If you know.

A. Right now I don't know.

Q. To make the steps level, in other words. That's the question. A. I don't know.

Q. You don't have any idea? A. No.

Q. Did you state that the accommodation ladders are figured to be used only for empty ships? That is what they are built for?

A. That is near that empty stage is where they have the best angle for the steps.

Q. I believe, Captain, you stated that you would

(Deposition of William J. Accurso.)

not use this particular accommodation ladder under any circumstances at [46] this time for some reason. Why was that?

Mr. Kennedy: Just a moment.

Mr. Williams: If he didn't so testify——

Mr. Kennedy: Excuse me. Off the record.

(Off the record discussion.)

(Record read.)

The Witness: Safety reasons. I figure it was safer to use a Jacob's ladder under these conditions.

Q. (By Mr. Williams): Well, is it your testimony that even if the ship had not been tender you would have used the Jacob's ladder or the pilot ladder rather than the accommodation ladder, is that a correct statement?

A. It's hindsight now, much better than foresight. The way we were going to discharge that cargo, I'd say it was just as safe to use a Jacob's ladder.

Q. If the draft of the vessel was different, would that have altered your decision? If there was a greater amount of freeboard under the conditions prevailing——

A. I—we still had to discharge that deck load into the water and then the barges was up and down. I don't know. It may and it may not.

Q. Do you know how long you were going to be there when you arrived?

A. I don't remember now, because I don't remember whether they said I was going to load or discharge or what.

(Deposition of William J. Accurso.)

Q. Did you know you were going to be there at least three [47] or four days?

A. Well, somebody must have—I could have estimated or found out from the stevedores, two or three days, whatever it was. I don't remember now.

Q. Now, Captain, did you observe people using this pilot ladder at that time and place?

A. Yes. I even used it myself half a dozen times.

Q. You said that you went up on the boat deck to get on and get off the ladder? A. Yes.

Q. Is that what most of the crew did?

A. Most of the crew they got off on the main deck. That's where they lived or stayed in their rooms. I had to go up two more decks. It was just as easy for me to go up that way.

Q. Captain, isn't it a fact it would be more difficult to get off that Jacob's ladder at the main deck than it would at the boat deck?

A. I don't know.

Q. Your answer is you don't know?

A. It would probably be a little more exercise involved, yes.

Q. Is it not correct, Captain, that you have to step around the edge of the ladder? The ladder would continue on up and you would have to step around the side of it to get over the gunwale and onto the main deck? A. Yes.

Q. Whereas up on the boat deck, it would only be necessary—the ladder stopped there and you would go just right up and over the top of it?

(Deposition of William J. Accurso.)

A. Yes. If it didn't stop, [48] it would go over the rail and down to the deck.

Q. It didn't continue on up? A. No.

Q. You said, I believe, that you had just one accommodation ladder on board?

A. As far as I recall, yes.

Q. Are you certain whether or not you had one or two or is that just your best estimate or are you certain?

A. As far as I recall, we only had one.

Q. Do you know why ships carry two?

A. Well, if you're moving, you know, and a port like—time is of the essence, especially when you got stevedores waiting. Most companies that own ships, they will have two, just for the time involved and the money saved and especially going to the dock. That way you don't have to keep interchanging. One dock you might be on the port side and the other dock you are moving to an hour later might be on the starboard side.

Q. Do you know where the accommodation ladder was kept aboard this vessel, Captain, at the time? A. I don't remember now.

Q. Do you know if there is a platform to which it can be fastened? A. Yes.

Q. Do you know if it was right there or someplace else? A. I don't remember that.

Q. About how long would it take you to hook up an accommodation ladder, rig it for use? [49]

A. That would all depend on the circumstances;

(Deposition of William J. Accurso.)

if the cargo gear was down: which side it was; which side you wanted to rig it on.

Q. You would have rigged it on the same side you would have rigged the Jacob's ladder on, would you not?

A. Maybe. That I can't tell you're at an angle, it doesn't matter which side you rig your accommodation ladder. You must have a reason: whether you are going to work cargo on one side—it's hard to say right now. It depends on the circumstances.

Q. Well, do you know about what period of time it would ordinarily take to rig that up?

Mr. Kennedy: Excuse me. I think he has answered that. If there are various illustrations you want to give, that is all right. I believe he has answered the question. He said it depends on the circumstances. It depends on which side they want to rig it. It depends on this and it depends on that.

The Witness: Do you want me to answer that?

Mr. Kennedy: If you can, go ahead and answer it.

The Witness: We are assuming now there is only one ladder on a ship, accommodation ladder we are speaking about. If everything is handy there, the railings and everything, swung in in the recess of the vessel, you might have a gear box—it's just a matter of flopping that out and hooking your falls up. There's a lot of little things that come in [50] there. Assuming that everything is under the best conditions, you can rig that in 15 or 20 minutes and have it lowered. Assuming you're going to have to move it over to the other side, your cargo booms

(Deposition of William J. Accurso.)

are there. That's the only means you have to move stuff around on merchant ships. You have to rig one side, disconnect and pick it up and bring it around the hatch. You're using No. 3 gear and 4 gear. Your midshiphouse is in between. You can't rest it on the dock. It could be as much as two hours, two and a half hours and you can rig it as quick as 20 minutes maybe. That would be an exceptional crew.

Q. (By Mr. Williams): Does the time factor of the rigging have a bearing on your decision?

A. No, sir.

Q. Had it in other cases?

Mr. Kennedy: I think we are getting way afield.

The Witness: You could still throw a pilot ladder over if the guys wanted to go or come up. You do it for the port officials.

Q. (By Mr. Williams): Do you know the exact length of the pilot ladder that was used?

A. No, I don't.

Q. Captain, you gave some testimony concerning the use of a pilot ladder and an accommodation ladder in the Orient. Now, is there any different factors elsewhere or is that peculiar to the Orient that you referred to?

A. In the Orient there's an awful lot of laying at anchor that you ordinarily don't do in other trades, like in [51] Europe. You seldom lay at anchor in Europe. Proportionately, we'll say, in this country merchant ships—well, right here in the harbor, did you ever see any ship laying at anchor

(Deposition of William J. Accurso.)

20 minutes or so—just to pass quarantine. Very seldom.

Q. Did you have a conversation with Malcom E. Potts following the injury to Mr. Farley?

A. I don't recall. I might have asked him what had happened. I don't recall.

Q. You don't recall whether you had a conversation or you don't recall what the conversation was?

A. I don't recall having a conversation.

Q. Did you ask him to sign a statement or fill out some sort of a report with regard to that accident?

A. I may have, yes, but I don't recall it now.

Q. Well, I will ask you whether or not he told you why he happened to fall.

Mr. Kennedy: Off the record.

(Off the record discussion.)

Mr. Kennedy: I will object to that on the ground it is hearsay.

Mr. Williams: I want to ask him the question anyway. The court will rule on it later.

The Witness: I don't remember whether he did or didn't or whether I asked him or not.

Q. (By Mr. Williams): The Malcolm E. Potts that I have reference, do you know who I mean?

A. Yes. [52]

Q. Who was he and what relationship did he sustain to the S. S. Augustin Daly?

A. He was assistant cook at the time.

Q. Had you been to sea with this man before?

A. No.

(Deposition of William J. Accurso.)

Q. Do you know if this man had ever been to sea before? A. No, I don't.

Q. Captain, when the Jacob's ladder was rigged to provide ingress and egress for members of the crew, did you give the crew any instructions as to how the ladder should be used, any instructions as to the method to employ in going up and down the ladder?

A. You mean me personally or through the mate?

Q. Did you personally? A. No.

Q. Did you instruct the mate to give some instructions like that?

A. Well, specifically, I don't remember that either. I'm sure I must have said something about telling them to take it easy, you know, not jumping two or three at a time. The officers there were all, say, older men, the majority of them, so they knew enough to tell them to take it easy.

Q. You gave no instructions to the crew members? A. Me personally, no.

Q. Did you post any instructions for them to read? A. No, not in that regard.

Q. I meant with regard specifically to going up and down the Jacob's ladder. [53]

A. No. They're supposed to be sailors.

Q. I will ask you, Captain, if you know it to be a fact that Malcom E. Potts, the assistant cook that was referred to, had never been to sea before.

Mr. Kennedy: He has answered that.

Mr. Williams: He can answer it.

(Deposition of William J. Accurso.)

Mr. Kennedy: Go ahead.

Mr. Williams: There is no harm in it.

The Witness: I think I did answer that. I don't know whether he was or had been.

Q. (By Mr. Williams): You don't know?

A. I don't know.

Q. Did you make any inquiry among the crew members to ascertain which ones had been to sea before and which ones had not?

A. I don't ask them. They have the papers. The Coast Guard sanctions them to sail under certain grades. They got their papers and that's good enough for me.

Q. And you give them no further instructions then once they come aboard?

A. I wouldn't say that.

Q. Relative to the use of the Jacob's ladder?

A. No.

Q. You do sometimes?

A. I don't, not in the position as master, no, not unless I happen to be standing there and I see something radically wrong, I'm going to tell them.

Q. When did you again see Mr. John Farley following this [54] accident, Captain?

A. I seen him in Yokohama. He was en route to the states. They were bringing him back. The time and date I don't remember. I seen him in the United States Lines' office in Yokohama one morning.

Q. Was that line the local agent for your ship?

A. Yes, U. S. Line.

(Deposition of William J. Accurso.)

Q. You said they were flying him back to the United States then? A. Yes.

Q. Who informed you of that?

A. He did. Farley.

Q. Did you come to pick him up, to see if he was fit for duty? Was that part of the reason you came to see him?

A. No. We just arrived. I was in there on ship's business. I had to go to the American Consulate. I didn't even know he was in town.

Q. Do you know Captain, at that time that you have reference to in Yokohama, was the ship anchored in the harbor?

A. I don't know whether we were anchored or at a dock.

Q. Did you ask Mr. Farley to come out and get his things that were on the ship?

A. I don't think so. I don't remember now.

Q. I will ask you whether or not you told John Farley that it would be all right for him to come out to get his things, because you had an accommodation ladder rigged at the time?

A. I don't remember that.

Q. You don't remember if you said that or not?

A. No.

Q. And you don't know whether or not you had an [55] accommodation ladder rigged at that time?

A. No, I don't.

Q. Captain, is your memory quite clear as to how the pilot ladder was rigged to the S. S. Aug-

(Deposition of William J. Accurso.)

Q. Justin Daly while in port at Sasebo, Japan? Do you remember quite clearly?

A. As much as I normally would, yes.

Q. Did you come back to the ship the day following Mr. Farley's injury? A. Yes.

Q. In the morning?

A. Yes. We sailed that same morning.

Q. You are sure that the facts with reference to the pilot ladder were exactly as you have stated them?

A. As close as I can remember. That happened quite a while ago.

Q. Captain, you stated that there are passage-way lights where the pilot ladder is fastened to the ship. Are there some both on the main deck and the boat deck? A. Yes.

Q. But you, of course, were not there and you don't know whether or not they were on?

A. I'm sure they were on. When we're working cargo, they all go on at once.

Q. Your answer to my question would necessarily be "no," would it not? You weren't there, were you? A. At night?

Q. Yes, at this time. A. No.

Q. You say there was a cargo light rigged up?

A. Yes.

Q. Did you see that light?

A. Yes. They normally just leave it there in the daytime.

Q. Do you recall exactly where it was fastened?

A. No.

(Deposition of William J. Accurso.)

Q. You don't know whether it was even with the side of the ship, out over the side of the ship or back in from the side of the ship?

A. It would be somewhere on the rail.

Q. Is it on a stand or is it fastened onto the rail itself?

A. They are fastened by a rope to the rail.

Q. Is it fastened on the main deck or the——

A. In that case it would be the higher part. It would be the boat deck. That way it would shine right down.

Q. You say it shines the whole length of the ladder? A. Yes.

Q. Are you certain of that, under these particular circumstances existing at this time and place, which is April 5, 1952?

Mr. Kennedy: He wasn't there.

Mr. Williams: Excuse me. I will rephrase the question. I realize that.

Q. You had seen this light fixed prior to the time? Had you seen it on at night before?

A. Yes. [57]

Q. Do you know whether or not it would shine down the whole length of that ladder or just a portion of the ladder?

A. There would be sufficient light. There was enough lighting there.

Q. That would depend on where the light was fixed, wouldn't it? Where it was fixed?

A. Yes.

(Deposition of William J. Accurso.)

Q. And you have testified, have you not, that you don't recall exactly where it was fixed?

A. I'm testifying that I don't exactly know. I know it isn't fixed up on the bow, 300 feet away.

Q. You're sure of that?

A. Absolutely. I don't want to argue with you people.

Q. I will ask you if you examined that cargo light closely, Captain, to determine what kind of a bulb it had in it, that particular one? A. No.

Q. Do you know if it had about four, 40-watt bulbs, or whether it had more wattage than that? You did not examine it? A. No.

Q. Your testimony concerning three to five hundred watts just pertains to what is normally furnished? A. Yes.

Q. Captain, while the Augustin Daly was in port at Sasebo, Japan, at the time we referred to, did you make any orders to the chief engineer or any of the other engineers relative to correcting the list of the vessel?

A. If I did, I don't remember now.

Q. Captain, have you discussed with any representatives [58] of the respondent in this case, that is, the United States of America, or with any representatives of its general agent for the voyage involved herein, W. R. Chamberlain & Company, any of the facts leading up to the injury of John Farley?

A. I may have made sure that the injury reports

(Deposition of William J. Accurso.)

were made and the statements and the logbook entries.

Q. Have you discussed the matter with the representatives of the respondent, United States of America, or with its agents involved? A. Yes.

Q. How many discussions have you had?

A. Like this morning, I come in here and looked at the logbook and that statement I made once before. Outside of that—

Q. Do you know how many written statements you have given?

A. One that I know of, that I can remember.

Q. Have you talked to Mr. Kennedy here concerning this matter? A. Yes.

Q. How long did you talk to him about it?

A. I talked to him about an hour, just to refresh my memory. I had forgot all about half this stuff.

Q. Did you read the deposition of your chief mate aboard this vessel, Mr. Glenn A. Morgan?

A. Yes.

Q. You read that?

A. No, I just looked through it.

Q. When did you do that?

A. A little while ago.

Q. Have you talked with Mr. Morgan about the facts [59] leading up to this injury of Mr. Farley since the injury occurred? A. Say that again.

Q. Have you talked with Mr. Morgan, your chief mate, chief mate on this ship, concerning the facts leading up to Mr. Farley's injury since the accident itself happened? Have you talked with

(Deposition of William J. Accurso.)

him about it? A. You mean like the day after?

Q. Well, any time after.

A. Yes, sure. I tried to find out what happened.

Q. And have you talked with him about the matter since you got back to the United States?

A. No. I got off that ship. I haven't seen nor heard of him since.

Q. Of Mr. Morgan?

A. Yes. I haven't seen Mr. Farley since either, since that time in Yokohama. I don't think I have seen him anymore.

Q. Captain, is it your testimony that the reason it is safer to use a pilot ladder than an accommodation ladder under the conditions prevailing in Sasebo at the time previously referred to is that—

A. (Interrupting) This particular instance I thought it was safer to use it and still do under the same circumstances to use a pilot ladder instead of an accommodation ladder, that accommodation ladder.

Q. That particular one?

A. That type on a Liberty ship. All Liberty ships came out originally with that type. [60]

Q. Would your decision have been different—

Mr. Kennedy: I am going to object to that on the ground it has been asked three or four times. It is repetitious and it has been testified to. All of these matters have been testified to previously, both on direct and on cross examination.

Mr. Williams: Captain Accurso, is it your testimony that the reason that an accommodation ladder

(Deposition of William J. Accurso.)

was not as advisable as a pilot ladder under the circumstances at Sasebo, Japan, at the time we have referred to was that the ship might shift? Was that one of the reasons, and that a man might fall from an accommodation ladder more readily than from a Jacob's ladder, is that your testimony?

A. I was afraid of the lurch. That was one of the reasons; the cargo working, the barges, throwing these pilings into the water, everything. There's a lot more involved there than just that particular instance.

Q. How would a sudden lurch of the vessel in the harbor at Sasebo have rendered the use of an accommodation ladder any less safe than a pilot ladder?

A. In this particular case, with the stanchions fairly lower, the ladder itself closer to a horizontal position, if both were used or singularly, they would be up and down and you would have to be stooping over to a slight crouch and hanging on one hand or two hands. Most guys just use one hand, which would be unsafe. It's just a human failing there, and [61] with these steps, of course, with the possibility of slipping through, with that sudden lurch or losing your balance, if there was cargo or barges down there, you're liable to fall down. There's a lot of little matters that come into it. I still maintain that it would be safer to use the pilot ladder.

Q. Captain, have you ever seen planks placed over the steps of an accommodation ladder and

(Deposition of William J. Accurso.)

cleats nailed to the planks so as to avoid the problem of the steep steps?

A. Sure, I have done it myself.

Q. Was there any reason why that could not have been done under these circumstances?

A. It could have been done.

Q. But it would have taken a longer time to do that? A. I think we already had one.

Q. You had a plank to put on?

A. If we wanted to use it. I think we used one up alongside the dock.

Q. That would have disposed of the problem of the steep steps, wouldn't it?

A. As far as slipping through, yes. You could still fall overboard.

Q. But they wouldn't slip on that step?

A. No, not through, no, but by the same token, if you make one level theoretically you are only using one and the other one would be too steep, so where the hell are you?

Q. I didn't understand the last portion of your answer, Captain.

A. Them cleats, they are [62] theoretical up to a point like that (indicating). You're still going to have the low hanging handrail. Okay. If a guy is doping off, that gives him false security. With the possibility of the ship lurching, you could still go in the drink, fall onto the piling that was laying alongside or anything else.

Q. Is it customary to place a net underneath the accommodation ladder?

(Deposition of William J. Accurso.)

A. Not alongside the ship. You can't rig it. The accommodation would normally lay alongside the vessel. There's not outrigger. Under those conditions, no.

Q. Captain, is it a usual and customary thing when men return to the ship from shore liberty that they have been drinking?

A. How would I know? I drink but I can't say that you drink.

Q. Captain, in your experience aboard several vessels, have you frequently seen men come back from shore liberty that have been drinking excessively? A. I have seen it on occasions, yes.

Q. And have you frequently seen men return from shore liberty in a foreign port carrying packages? A. Yes.

Q. How are those packages brought aboard? Are they carried up by the men themselves?

A. It all depends. It all depends on what you're buying, how big they are, what they are.

Q. You haven't any separate means of loading packages [63] unless they are very heavy?

A. No. The individuals buying any stuff, souvenirs or anything for personal use, he takes care of getting that aboard. We don't run any USO or anything, you know. If they buy a set of dishes and it's in two great big cases, it's up to them to get it back, not me or the steamship company.

Q. Captain, I'm going to ask your opinion as to whether or not it would be safer under the conditions prevailing on the U. S. Augustin Daly dur-

(Deposition of William J. Accurso.)

ing its time in Sasebo harbor that we have referred to to have provided an accommodation ladder for crew members returning from shore liberty, particularly when they had been drinking?

Mr. Kennedy: I think you are assuming a fact that is not in issue and I am going to object to that. There is no testimony about any crew members coming back drinking. You are assuming something that has not been testified to and it is not at issue. It isn't a proper hypothetical question.

Mr. Williams: Would you please answer the question?

The Witness: That would be problematical.

Mr. Williams: No further questions.

Redirect Examination

Q. (By Mr. Kennedy): Captain, I believe you testified that you did not know to what ports you were going when you left the United States, is that correct? A. That's correct. [64]

Q. Did the Navy later give you directions?

A. Yes, radio diversion, orders by diversion, radio.

Q. Did you have any control over what cargo was being loaded aboard the vessel?

Mr. Williams: Objected to as leading.

The Witness: What did you say?

Mr. Kennedy: He has got an objection in there. I will ask you another question, Captain.

Q. Who had charge of what cargo was to be loaded aboard the vessel?

(Deposition of William J. Accurso.)

A. When the Army or Navy charters a merchant ship, they tell you what they are going to load. The only objection the officer on watch or the master has, if it will affect the seaworthiness of the vessel. If it isn't going to affect the seaworthiness of the vessel or the safety of lives or something, it's loaded. That's all there is to it.

Q. What was your opinion with respect to the cargo and the fuel oil, with respect to the seaworthiness of the vessel?

A. It was in seaworthy condition or I wouldn't have gone out.

Q. I take it your answer is that you were in a seaworthy condition.

A. Absolutely. I can't swim and I'm protecting myself.

Q. Now, this tenderness on your trip, did it develop to any appreciable extent during the middle of the voyage? A. No. [65]

Q. When did it develop to any appreciable extent?

A. When it started, say, being an annoyance the day before. She started taking them flops and lurches.

Q. The day before what?

A. Arrival in Sasebo.

Q. Do you know, Captain, whether or not the filling of the double tanks with sea water would completely correct any tenderness of the vessel?

A. I do. It would.

Q. It would correct it? A. Absolutely.

(Deposition of William J. Accurso.)

Q. I believe you testified on cross examination that you gave orders not to fill them because——

A. (Interrupting) I mean the orders to fill them would emanate from me, not from the engineer.

Q. Did you give the engineer orders?

A. No. I discussed with him. I decided I didn't want to ballast. The chief engineer heartily agreed with me because that doesn't contaminate the fuel oil.

Q. Did you expect to discharge some cargo in Sasebo?

A. I did.

Q. Did you expect to discharge the deck cargo?

A. Nothing else you could discharge. You have to discharge your deck cargo to get at your hatches.

Q. What effect would discharging deck cargo have upon tenderness of the ship?

A. Eliminate all tenderness, lower your center of gravity—I mean your metacenter.

Q. Did you expect to obtain more fuel in Sasebo, Japan? [66]

A. I did, and fresh water which we got, of course.

Q. Now, Captain, there are several notations in the logbook as to lists. I believe on the date of arrival it states you had a 12 degree port list and then there is a reference later on to a list. Does the logbook necessarily indicate any or all of the flops of the vessel?

A. No.

Q. I will ask you this: What would the logbook indicate insofar as flopping or lists were con-

(Deposition of William J. Accurso.)

cerned? Let me phrase it this way: Would it indicate just permanent lists or every list?

A. It would indicate a permanent list at the time, of course.

Q. Would it indicate every flopping of the vessel?

A. No. A flop could even be more than the list that it would settle on. When it flops, it could go as far as—keel over say as much as 20 degrees maybe, but then it could settle out to 12.

Q. The point I was getting at is, I want to know whether or not the logbook would indicate every flopping of the vessel. A. No, it wouldn't.

Q. That would not be recorded?

A. No. You wouldn't record that anymore than if you are taking sea, you know, heavy water at sea. Just a generalization. You wouldn't say, "0901, took sea. 0902 took another one"—all the way down the line.

Q. I believe you also testified that this Jacob's ladder was not secured on the bottom, near the water? A. No. [67]

Q. Was there any way that that could be secured down there? A. No.

Q. It isn't common practice, is it, to secure Jacob's ladders down at the bottom? A. No.

Q. Now, on April 5, Captain, which is the day before you sailed, do you recall whether the ship had any list at all, whether it still had any list?

A. What's this again?

Q. On April 5, which is the day before your de-

(Deposition of William J. Accurso.)

parture from Sascho, do you recall whether the vessel had any list? A. No.

Q. Do you want to check the logbook?

A. Two degree port list, 2100. That was the finish of the cargo.

Q. Now, on cross examination, I have a note here, Captain, that you also testified that the tender conditions of the vessel were not a consideration on April 5, as far as this Jacob's ladder or the accommodation ladder was concerned. Now, I will ask you this: Were there other factors which were still a consideration why the Jacob's ladder was being used on that day?

A. Yes. The cargo work.

Q. And would the deep draft of the vessel have been still one of the considerations?

A. Yes. I forgot that. The draft hadn't changed appreciably.

Q. Now, insofar as your decision was concerned, Captain, to use the Jacob's ladder, were all of those considerations [68] that you have testified to—all of these factors that you have testified to, were they taken into consideration in making your decision?

A. Yes.

Q. In other words, what I am getting at, we have been dividing up some of these various factors. Was your decision based on all of these factors?

A. Yes.

Q. It was all the circumstances that existed?

A. Absolutely, yes. It all boils down to, I still think it was safer to use the pilot ladder. I have

(Deposition of William J. Accurso.)

used it plenty of times since then, working cargo, laying at anchor. By the way, I just finished an 18-month trip out there.

Mr. Williams: I will move the answer be stricken as not responsive to the question.

Q. (By Mr. Kennedy): Now, Captain, can you regulate that accommodation ladder to some extent with falls or whatever you call them? A. Yes.

Q. You have got some degree where you can regulate them, is that right?

A. Yes. You mean up or down?

Q. Yes. A. Yes.

Q. I mean as far as the angle is concerned.

A. Yes.

Q. There was also considerable questions and some testimony about the time required to rig an accommodation ladder. Was that any factor in your decision? A. Safety—

Mr. Williams: Before you answer, Captain, I want the record to show I object to that question as being leading.

Mr. Kennedy: I will rephrase the question. No, I won't. [69] Go ahead and answer. Do you recall the question?

A. Yes. I did it solely for safety, safety angle in my own mind.

Q. Consequently, the time made no difference as far as the accommodation ladder was concerned?

A. No. Under similar circumstances today I would do the same thing. I would have rigged the pilot ladder instead.

(Deposition of William J. Accurso.)

Mr. Williams: I will move that that answer be stricken as not responsive to the question.

Q. (By Mr. Kennedy): Captain, how do you get sailors for any particular trip? How do they come aboard?

A. The companies I work for all got agreements with various unions. Sailors come out of the union hall.

Q. Say, for instance, you want to get two AB sailors. What practice do you follow?

A. I notify the company or the mate does. It depends on the custom of the company. Usually the master informs the office and they in turn order new men through the various unions.

Q. Is that pursuant to various union agreements? A. No.

Q. Do you have any individual say in what crew members—— A. You mean ordering the men?

Mr. Williams: The question is objected to as leading.

The Witness: No. I can just order two AB's. I can't tell them to get Joe or Pete or somebody like that.

Q. (By Mr. Kennedy): Now, Captain, on cross examination you [70] were asked as to whether you had talked to me about this particular case. I believe you testified that you looked over the log.

A. Yes.

Q. And glanced through the deposition of the chief mate and you were here for about an hour. What did I tell you about this testimony, Captain?

(Deposition of William J. Accurso.)

A. What did you tell me? You said for me to tell the truth and that's all, to the best of my recollection, and if I don't remember, to refresh my memory in the logbook if it became necessary.

Q. Did I give you any instructions to testify in a certain manner or anything like that, Captain?

A. No.

Q. In other words, there was no dirty work afoot here? A. No.

Q. As far as I have been coaching you or anything like that? A. No.

Mr. Williams: That last question is objected to as leading.

Mr. Kennedy: I believe that is all except for the question about signing the deposition.

Recross Examination

Q. (By Mr. Williams): Captain, I believe you testified that the decision to use the pilot ladder rather than an accommodation ladder was dictated partly by something in regard to cargo work. Do you have reference—I believe you previously testified that [71] a barge might run into the accommodation ladder if it was down. Is that what you had primary reference to?

A. No. The swinging of these long—not primarily, but the barges—if the barge is moving back and forth, you can't manipulate the cargo by hand, so they have to keep moving the barges which continually get in the way of the accommodation ladder. Not only that, by swinging these long timbers,

(Deposition of William J. Accurso.)

they're kind of awkward too. They can swing around. If that lets go, it can possibly come in and bang against there.

Q. That same situation would exist to the pilot ladder too, if there were men on the pilot ladder, they could get hit also if a timber swung around?

A. Not exactly. You've got these bridles leading down the accommodation ladder. It could hit any part of that and still result in a blow and make you possibly lose your balance. The pilot ladder, it would have to hit in that local area, that 14 or 16-inch width, whatever it happened to be.

Mr. Williams: I have no further questions.

Further Redirect Examination

Q. (By Mr. Kennedy): Captain, where can you rig an accommodation ladder on the vessel?

A. Accommodation ladders are so made in most cases you can only hook them up where they are made to be hooked up, connect up with the gangway platform and the falls where they [72] have the bridle and the davit arms available. The pilot ladder, you can move them anywhere along the vessel from the bow to the stern on either side.

Mr. Kennedy: Captain, you have a right to read and sign this deposition or you can waive that right if you wish. Now, do you care to read and sign it or do you wish to waive that right?

The Witness: I would just as soon waive it.

[Endorsed]: Filed March 16, 1955.

RESPONDENTS' EXHIBIT No. 11
DEPOSITION OF S. L. JOHNSON

* * * * *

S. L. JOHNSON

called as a witness by the respondent, being first duly sworn by the Notary Public to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination

Q. (By Mr. Krause): Your name is S. L. Johnson?
A. That's right.

Q. Where do you live, Mr. Johnson?

A. 1148 and a half 53rd Street in Oakland.

Q. Is that 53rd?
A. That's right.

Q. And what is your occupation?

A. Elevator operator on the S. S. Lurline.

Q. Generally speaking what has your occupation been before being on the Lurline?

A. I have been on several ships before that, so I have been on different jobs.

Q. That is within the Steward's Department usually?

A. Always in the Steward's Department.

Q. You haven't gone to sea as a seaman? I mean, as a sailor or Engine Room employe?

A. No, I haven't.

Q. How old are you?
A. 28 years old.

Q. Is California your birth place?

A. I was born in Pine Bluff, Arkansas.

Q. Now, were you a member of the crew of the Augustin Daly back in 1952?
A. Yes, sir.

Q. How were you employed on that ship?

A. As a messman. [3]

(Deposition of S. L. Johnson.)

Q. Do you know just roughly the months that you were on the ship? A. Yes.

Q. Could you tell us?

A. March the 2nd I went aboard the ship, on Sunday morning, 1952.

Q. About when did you leave her?

A. March—not March; August, about the 15th, if I'm not mistaken.

Q. During that time where did the vessel go?

A. She left Portland, Oregon for Japan, but she ended up in Sasebo.

Q. Before you left the ship she returned to this country too, didn't she? A. That's right.

Q. But after the vessel left Portland, the first port of call was Sasebo in Japan?

A. That's right.

Q. Do you know about when she got to Sasebo?

A. I can't recall the day. No, I can't. I only know it takes around 28 or 30 days to get there, so you can figure April something, around April 2nd or something.

Q. At Sasebo did the ship discharge cargo there?

A. It did.

Q. How did she discharge? Was she tied to a dock or was she at anchor?

A. She was anchored.

Q. Do you recall just generally what kind of cargo she had?

A. She had lumber and— that's what she had on deck. I don't know what they had in the holds or hatches. I don't know. [4]

(Deposition of S. L. Johnson.)

Q. On the trip over to Japan, was the ship pretty deeply loaded or did she not have a full cargo? A. She was loaded.

Q. Now, did you have any occasion to go ashore while you were at Sasebo? A. Yes.

Q. How did you go ashore?

A. We went ashore on a Bumboat.

Q. It is a launch, is it, that transports members of the crew from the ship to the shore?

A. That's right.

Q. This boat, do you know whether that was provided by the shipowner or did you have to provide the boat, the men that went ashore?

A. It wasn't by the shipowners, I don't think. I don't know who it was owned by.

Q. I don't mean owned by. I meant provided. Did you have to pay for the riding on the boat?

A. No.

Q. The boat came to the ship and took you off and then later brought you back again? What kind of a boat was it, Mr. Johnson?

A. Well, it was a Japanese boat. I couldn't say what kind it was. All I know, it was, like you said, it was a launch. What kind of a boat it was I couldn't tell.

Q. We don't want to know exactly. We just generally want to know how big it was.

A. Like I say, it was much larger from here to that door there (indicating). I wouldn't say too much wider, but it was longer. [5]

Q. You were pointing to the length of the room

(Deposition of S. L. Johnson.)

we are in, but could you give us some rough idea of about how many feet long you think this boat was? A. I'd say from 30 to 40 feet.

Q. Now, it was propelled by an engine of some kind, wasn't it? A. Yes.

Q. Do you recall whether it had any covered spaces on the boat? Was there a roof over any part of the boat?

A. Well, like I say before, I can't remember that. I know naturally they had one over the engine, I'm sure, but I can't say they had one over the top where that man was guiding the boat or not, I couldn't say.

Q. Where the men were riding, you don't know whether that was covered or not?

A. No. Naturally, a certain part of it would have to be covered because for the Engine Department.

Q. But my question was, you don't recall whether the place where you were sitting and the other men were sitting in the launch, whether that was covered with a roof? A. I can't say.

Q. Now, when you left the ship, do you remember how you got from the ship to this launch?

A. Like I was saying before, we had a ladder, you know, not a Jacob's ladder, but actually a gangplank that let you down.

Q. An accommodation ladder?

A. I don't—

Q. A ladder with real steps on it?

A. That's right. [6] If I'm not mistaken, we

(Deposition of S. L. Johnson.)

went down on that. I'm not sure of that. Anyway, when we came back, we didn't go back on that ladder because maybe the current came in or something and we didn't go back. Anyway, we went back up the Jacob's ladder.

Q. You don't recall then how you went down——

A. (Interrupting) No, I can't.

Q. ——from the deck of the ship to this Bumboat? A. I can't say.

Q. But the only means that you could have used would either have been the accommodation ladder or the Jacob's ladder? A. That's right.

Q. Do you recall roughly about what time of day you left for shore?

A. Well, I think it was around six o'clock, something like that, or maybe five-thirty. I would say six.

Q. About how long did it take to get to shore from the ship?

A. I'd say half an hour, forty-five minutes.

Q. How long did you remain ashore?

A. All afternoon until that night.

Q. Now when you say "afternoon," is it still afternoon after six o'clock in the evening?

A. Well, in the evening then.

Q. I mean, just so we understand each other here, it's afternoon all right, but most of us understand that as being from noon until about supper time. You remained ashore until around midnight or so? A. Yes. [7]

(Deposition of S. L. Johnson.)

Q. Do you remember any other members of the crew that went ashore that evening too?

A. This gentleman that got hurt. I forget his name. Mr.—what's his name?

Q. The fellow that was hurt later that evening, that night? A. Yes. Was his name Mr. Farley?

Q. Garley. A. Mr. Farley.

Q. Do you know whether he was an engineer on the ship?

A. Yes, sir, he was. I think he was the second, if I'm not sure, and Mr. Goodry.

Q. Do you remember the name of any other man that went ashore with you?

A. Not actually know their name. I know them when I see them.

Q. Was there a fellow on by the name of Potts on the ship? A. Yes.

Q. Did you know him? A. Yes.

Q. Was he on the boat with you when you went ashore? A. Yes, sir.

Q. Now, while you were ashore, just tell us generally what you did?

A. Well, we had a few drinks and I——

Q. You are talking about Potts now?

A. That's right, Potts. We had a few drinks. We bought souvenirs, went sightseeing and we came back to the ship that night.

Q. How did you get back to the dock from up-town?

A. We came back in a taxi, Japanese taxi, if I can [8] recollect.

(Deposition of S. L. Johnson.)

Q. Is that an automobile? A. Yes, sir.

Q. And from the taxi to the Bumboat, how did you navigate? A. We walked.

Q. You walked?

A. It's only a small distance from there to the dock.

Q. We are just wanting to know whether you were under your own power, or whether somebody was carrying you. A. Nobody carries me.

Q. Was Potts on his own feet too?

A. As far as I can remember he was.

Q. And Goodry?

A. Goodry, like I said before, I don't remember that Mr. Goodry came back with us or not. I can't say. He might have, but I can't say definitely.

Q. Now, were you and Potts together all evening, or were you separated at any time?

A. As far as I can remember, we were together most of the afternoon. I mean, the whole day.

Q. The whole evening, from six o'clock on?

A. Until that time we came back.

Q. You don't recall being separated at all, that you weren't with him for a period of time?

A. I might have been out of his company for five or ten minutes.

Q. You don't think it was longer than that? How did you get your drinks that evening and where? [9] A. I don't remember the club.

Q. We don't care about that. What I was just wondering is whether you bought a bottle or sat down in the bushes somewhere.

(Deposition of S. L. Johnson.)

A. We went to a tavern.

Q. Was it a place where they sold hard liquor too? I mean, whiskey.

A. No, it was a club.

Q. A club?

A. Yes.

Q. Was it a place where they sold whiskey?

A. Naturally, yes.

Q. I'm not familiar with that and we are asking you therefore to tell us. Did they also serve beer?

A. Yes.

Q. Are those liquors that they sell there Japanese liquors or do you buy American whiskey too, like Old Crow and stuff like that?

A. If I can remember, they had American brands and Japanese, if I can remember right.

Q. Is that American beer too?

A. Yes. They had American beer and Japanese beer.

Q. Do you remember what kind you were drinking that night?

A. No, I don't. To tell you the truth I would have drank anything there. We had been at sea for quite some time. Anything would have been all right with me.

Q. Do you remember what you did drink? Was it both whiskey and beer or either one of them?

A. Just drinking beer, that's all.

Q. Just tell us about when you returned to the boat on the return trip. What your condition as to whether you were [10] sober or intoxicated?

A. I was sober.

Q. What about Potts?

(Deposition of S. L. Johnson.)

A. As far as my opinion, he was sober too.

Q. Did you see Mr. Farley, the engineer, up in Sasebo at all, after he went ashore?

A. Only saw him when they was down on the dock fixing to catch the bumboat to come back to the ship.

Q. Did you observe Mr. Farley too as to whether he was apparently sober or not?

A. Well, like I said before, I never saw Mr. Farley drink before and at that time I didn't think he was drinking then. I didn't pay too much attention to him.

Q. You saw nothing that indicated that he wasn't under proper control? A. Yes.

Q. Did you see anything about Potts that would indicate that he wasn't sober?

A. No. He wasn't drunk as far as my opinion. You know, a person can have one beer and get high, or they can have nothing at all and still be the same thing as far as jolly. As far as my opinion, he wasn't intoxicated.

Q. Now, when the Bumboat got back to the ship, it laid up alongside the ship, I suppose?

A. Yes.

Q. And what sort of means was provided there for getting on the ship? A. A Jacob's ladder.

Q. Can you tell us just about what a Jacob's ladder is made of and what it consists of? [11]

A. It's made of wood like the rest of the ladders are, and ropes and you have to climb up the ladder, you know. It's kind of like a net. You

(Deposition of S. L. Johnson.)

have to climb up the ladder. That's the only way I can describe it.

Q. The steps themselves were made of what? Wood or rope? A. Wood. That's all.

Q. And the sides of the ladder were made of what? A. They are made of rope.

Q. Do you know where that ladder is fastened on the ship?

A. I can't remember. Like I said before, I don't know whether it was the boat deck or A deck or what. I know it was above the deck that we were sleeping on.

Q. It was above the main deck? A. Yes.

Q. What deck is immediately above the main deck? A. It would have to be the boat deck.

Q. Can you tell us whether there was any light there? This was at night time, wasn't it?

A. Yes.

Q. After midnight sometime?

A. It could have been. I don't know exactly. It was around midnight or a little after, something like that.

Q. And I suppose it is dark in Sasebo around midnight? A. Yes.

Q. When you got to the ship and particularly this Jacob's ladder, can you tell us anything about the lighting conditions?

A. If I can remember correctly, it was a light up above where the ladder was tied. I can't say [12] definitely, but I think it was a light up there, but I'm not positive, but I'm sure it was.

(Deposition of S. L. Johnson.)

Q. Do you recall whether you were able to see the ladder?

A. Yes. Anyone could see the ladder if he wasn't blind.

Q. Did you climb up the ladder too?

A. Yes.

Q. Were you able to see the steps? A. Yes.

Q. Now, when you got to the foot of this Jacob's ladder, can you tell us just what happened?

A. When I got on the Jacob's ladder?

Q. When the Bumboat got there to the foot of the Jacob's ladder, just tell what you saw.

A. Well, just a—went aside the ship so they could let the crew off going aboard the ship. That's all. I don't know who went up the ladder first, but anyway Potts went up there and he fell down. That's all. I don't know who went up first, but someone went up before him.

Q. Before Potts?

A. Yes, if I remember right.

Q. Do you know whether you went up ahead of Potts? A. No, I didn't.

Q. You did not go up ahead of Potts? Can you tell us about where you were when Potts was going up the ladder?

A. I was standing from the Jacob's ladder, say as far as from here to that door, I imagine. I mean from here to that wall.

Q. How many feet would that be?

A. I'd say ten feet. [13]

(Deposition of S. L. Johnson.)

Q. Do you have any recollection of where Mr. Farley was standing?

A. I couldn't say definitely. Evidently he must have been standing awful close to the ladder for him to fall. If a person falls they don't fall straight down. They don't fall—I couldn't say he was standing by the ladder or close to it.

Q. Did you see about from where Potts fell off the ladder, how far up he got before he fell?

A. I couldn't say. I don't know whether he was at the top or bottom, I don't know. He must have been quite a ways up when he fell. I don't know how far.

Q. Do you recall whether Potts was carrying anything as he went up the ladder?

A. Yes. He was carrying something, some packages. I don't know what they were. To my judgment I know he was carrying some souvenirs. What they were, I don't know.

Q. Do you know whether he had bought some souvenirs when he was ashore that night?

A. Yes. We had bought souvenirs together.

Q. Can you tell us roughly what kind of souvenirs they were? Were they clothing or toys or what?

A. We had bought clothing and toys and cigarette lighters and what not. A few souvenirs, but not too much to make too much packages. You know, small items.

Q. Tell us what your best recollection is as to

(Deposition of S. L. Johnson.)

how many packages Potts had as he went up the Jacob's ladder. [14]

A. I couldn't say. I don't know how many packages he was carrying.

Q. You do recall that he was carrying something? A. That's correct.

Q. Do you know whether any of those things he was carrying were bottles?

A. To my knowledge, I don't know. He could have been carrying bottles or he could not. I don't know.

Q. Had you, yourself, bought any whiskey while you were ashore or anything in bottles?

A. As far as I remember, no.

Q. You don't recall buying anything ashore that was in a bottle? A. No.

Q. Either beer or whiskey or anything like that?

A. As far as beer, you are going to get beer in bottle or cans, one or two, I don't remember.

Q. I am talking about whether you carried any back. A. No, I didn't carry any back.

Q. Do you recall whether Potts carried any bottles back for you?

A. If I remember—no, I can't.

Q. You don't remember that? A. No.

Q. What was your first knowledge of the fact that Potts fell, or was falling?

A. Someone said, "Watch out. The guy's falling." That was that. That's all. Like I said before, it happened so quick——

Q. Someone yelled? [15]

(Deposition of S. L. Johnson.)

A. You couldn't realize what happened.

Q. Someone did yell, you say?

A. Yes. Someone said, "The guy is falling."

Q. When you heard this warning given, what did you do?

A. I looked up and down and the man was there.

Q. And the fellow was falling?

A. He was there. That's all.

Q. Did you see what Potts landed on? I am not asking you for what you figured out. Did you see where he landed?

A. When the man says someone is falling, I can't remember just what he said, and the next thing I knew Mr. Farley was laying on the deck on that boat.

Q. Farley was laying on the deck?

A. Evidently he must have hit the guy. Like I said, it happened so quick, you just couldn't say.

Q. Do you recall, with respect to the ladder, was Farley closer to the foot of the ladder than you at the time?

A. He could have been, I'm sure he was.

Q. I'm asking you for your recollection. That is, was Farley closer to the foot of the ladder than where you were standing?

A. I'll say he was.

Q. And do you recall whether there were any other men between you and Farley?

A. I couldn't say, no.

Q. You don't recall?

A. No.

Q. Did Potts hit you too, when he came down?

A. No.

(Deposition of S. L. Johnson.)

Q. Did Potts get up under his own power after he had [16] fallen?

A. If I can remember, he did.

Q. Do you know how he got aboard the ship after he had fallen down the ladder?

A. If I can remember right, he went back up the ladder.

Q. That is your recollection that he went back up the ladder under his own power? Did he sail from Sasebo with you? A. Yes.

Q. Did he continue with his work during that time or was he in the ship's hospital?

A. He continued with his work.

Q. Did Mr. Farley return to the ship as far as you can recollect?

A. If I can remember right, I think Mr. Farley went to the hospital that particular night.

Q. And he didn't return to the States on the Augustin Daly? A. No, he didn't.

Q. You climbed that ladder after Potts had fallen off of it? A. I did.

Q. Did you experience any difficulty climbing it?

A. No, I didn't.

Q. Do you recall whether you climbed it with both hands free, or carrying packages?

A. If I can remember right I was climbing it with both hands free.

Q. Did you have any packages that you took back aboard the ship?

A. Yes, I did have some packages.

Q. How did they get aboard the ship?

(Deposition of S. L. Johnson.)

A. Right now, if I'm not mistaken, I think that we had— [17] after the accident happened, I think we put a rope around the rest of the packages and brought them up.

Q. With a heaving line?

A. Yes. If I'm not mistaken I think that's what happened. After the accident we drew them up with a line.

Mr. Krause: I think that is all. Mr. Williams will ask you some questions.

Cross Examination

Q. (By Mr. Williams): Mr. Johnson, have you been to sea prior to this voyage on the *Augustin Daly*? Had you shipped before that?

A. Yes, I had.

Q. As as messman or similar category?

A. Waiter, messman, pantryman.

Q. Had you been on Liberty-type vessels before?

A. Never had been on a Liberty before that one.

Q. Were you in the Navy during the war?

A. No, sir. I was in the Army.

Q. Had you climbed a Jacob's ladder prior to this occasion? Before the time of this injury to Mr. Farley, had you climbed a Jacob's ladder before then?

A. Yes, at fire and boat drill. We have them on all American ships and I climbed Jacob's ladders before that.

Q. On previous voyages, or this voyage?

A. Previous voyages.

(Deposition of S. L. Johnson.)

Q. Did you ever climb one for other purposes, other than [18] for fire and boat drill?

A. I have climbed before that besides fire and boat drill, on other ships, yes.

Q. How long had you been at sea prior to this particular accident? How many years?

A. 1946 I started to sea.

Q. Did you ship pretty regularly?

A. Off and on.

Q. Were you out on at least one ship every year, between '46 and 1952? A. Yes.

Q. I believe you estimated the length of the Liberty launch or Bumboat, as you call it, to be about 30 or 40 feet long? A. Yes.

Q. About how wide would you say?

A. I'd say it was about as wide as this room. It could have been. I wouldn't say definitely, but I'd say it's as wide as this room.

Q. Eight or nine feet?

A. Something like that.

Q. When you arrived in Sasebo, did you go ashore the first night you were there?

A. The first night, I think we did. I don't know, sir. I'm sure we did go ashore the first night. I'm not positive. I think we did go ashore the first night.

Q. Did you go ashore before this particular time when Mr. Farley was injured?

A. The accident happened in the afternoon, right? We had to go ashore that morning. I mean

(Deposition of S. L. Johnson.)

that afternoon, rather, before the accident happened. Is that what you mean? [19]

Q. What I mean is had you gone ashore at Sasebo on this voyage before the time that you have just related when you went in at six o'clock and came back around midnight. Had you gone ashore on a day before that, or at any time when the ship was in the harbor? A. Yes.

Q. You had already been ashore and back?

A. If the ship had been in before that, naturally we went ashore. If the ship came in the same day and the accident happened the same day—I don't know what you are trying to say, if I was in there two days or three days or what. Whatever day that happened, we had been ashore before that, if we had been in there longer.

Q. As soon as the ship reached port, you were given shore liberty and you went ashore?

A. That's right.

Q. You are not sure whether that was before this accident or whether the accident occurred the first time you went ashore? You're not sure about that, is that correct? A. Yes.

Q. Is it your recollection that you went down the accommodation ladder, but the Jacob's ladder was there when you came back, is that correct?

A. Yes.

Q. Do you remember what sort of a seating arrangement this liberty launch or Bumboat had on it? In other words, where did you sit on it to go ashore or return to the ship? A. Beg pardon?

(Deposition of S. L. Johnson.)

Q. Where did you sit in the liberty launch? [20]

A. They had some benches there to sit on.

Q. Did the benches run the same way the boat did?

A. Same way the boat did.

Q. They ran bow to stern?

A. Yes.

Q. About how many men went ashore, do you remember?

A. I couldn't say.

Q. Well, you have mentioned, I believe, going ashore with you were three other men whose names you have given?

A. Yes.

Q. There were other men besides that?

A. Yes, but I can't remember their names naturally. I do know Mr. Potts and if I can remember, Mr. Goodry and myself.

Q. You mentioned Farley too?

A. Yes. I don't remember whether he went ashore with us or not. He could have went earlier or later.

Q. You aren't sure he went ashore with you?

A. With us, but he did come back with us.

Q. When you got ashore, were you and Mr. Potts, you say, together all the time after you got ashore until you came back?

A. If I can remember, yes.

Q. Was anybody else with you? For example, was Mr. Goodry with you?

A. Mr. Goodry was with us for a while if I can remember right.

Q. Part of the time?

A. Yes.

Q. When you first arrived ashore, where did you go? [21]

(Deposition of S. L. Johnson.)

A. I couldn't recollect now just exactly where we went right offhand. We went someplace. I don't know exactly where we went straight when we left the dock.

Q. But shortly after you got there, is this correct, shortly after you arrived ashore, you went to some bar where you had some drinks? A. Yes.

Q. You and Mr. Potts? A. Yes.

Q. That is Malcolm Potts, isn't it? Isn't that his name?

A. I know his name was Potts. I never did know his first name.

Q. What is his position aboard ship?

A. He was the 3rd cook on the ship.

Q. And do you know how long you stayed in the first place you stopped in? A. No, I don't.

Q. Could it have been a couple of hours?

A. I wouldn't say hours. I couldn't say whether it was a couple hours or a couple minutes.

Q. You haven't any idea? A. No.

Q. Do you recall in general this whole incident very clearly? A. Yes.

Q. You recall it quite clearly? A. Yes.

Q. Did Mr. Goodry come back to the Augustin Daly with you? A. If I'm not mistaken, he did.

Q. Now, you don't know the calendar day that this accident occurred on, do you, just offhand?

A. No, I don't. [22]

Q. After you got out of the bar that you said you went to, where did you go after that?

A. Bought souvenirs.

(Deposition of S. L. Johnson.)

Q. That was in the evening? The stores were generally open then? A. Yes.

Q. What were these souvenirs, Mr. Johnson?

A. Pajamas, smoking jackets, cigarette lighters, and other articles. I can't remember exactly what all we did buy.

Q. Did you buy any bottles any time you were ashore there? A. I don't remember.

Q. I don't refer to bottles of beer that you drank ashore, but did you buy any whiskey bottles or any other hard liquor in bottles?

A. Not that I can remember, no.

Q. I take it if you don't remember buying any you don't remember bringing any with you then, is that right? A. That's right.

Q. And do you know if Mr. Potts did that?

A. As far as I remember, no. Mr. Potts didn't buy any as far as I can remember.

Q. Do you know if Mr. Goodry did?

A. I couldn't say, sir, because like I say, he wasn't with us all the time.

Q. Did you see Mr. Goodry with any bottles at any time? A. No, I didn't.

Q. About what time did you get back to the dock where the liberty launch was leaving from? [23]

A. I couldn't say exactly what time we came back onto the dock because it taken us around forty or fifty minutes to get from the dock to the ship, so I couldn't say exactly what time we was down there. Maybe a half hour, forty-five minutes. Could have been that. I don't know exactly.

(Deposition of S. L. Johnson.)

Q. Would it be your general recollection it was around midnight that you got to the dock?

A. No.

Q. It would be earlier or later? A. Earlier.

Q. Did you wait at the dock, you and Mr. Potts?

A. Yes, we did.

Q. For quite some time?

A. I'd say a short period of time we waited.

Q. Do you mean fifteen minutes?

A. Maybe half an hour. I don't know.

Q. Did you wait right at the dock, standing right out on the——

A. Outside of the dock. You don't stand right there for the launch to stop. You wait on the dock. That's where we waited.

Q. Were there other men waiting there with you? A. Yes.

Q. Who was there?

A. I can't remember the names.

Q. Was Mr. Farley with you?

A. Yes, he was there.

Q. He waited there with you for some time?

A. Yes.

Q. It is your testimony, is it not, that you were sober then, you and Mr. Potts were both sober?

A. I was sober and Mr. Potts was sober as far as I can [24] remember. I don't think—the man wasn't drunk.

Q. Mr. Potts wasn't drunk? A. No.

Q. And you weren't drunk? A. No.

(Deposition of S. L. Johnson.)

Q. In your mind is there someplace in between sober and drunk?

A. Well, there is two different things, a man drunk and sober. I wasn't drunk and I knew he wasn't drunk.

Q. I'm asking, Mr. Johnson, if you were someplace in between being sober and drunk, if you can recall.

A. I was sober.

Q. You would say you were sober?

A. Yes.

Q. What about Mr. Potts?

A. He was sober.

Q. About how many men went back on that liberty launch?

A. Well, I couldn't say exactly how many men went back on the launch. I don't remember.

Q. You don't remember?

A. I don't remember.

Q. Well, you have only mentioned about three men. There were more men than that that went back, weren't there?

A. I was speaking of the men I knew went back.

Q. I realize that. You don't mean to indicate that there were not other men that went back besides those that you have mentioned, do you?

A. Naturally, other men went back. Otherwise, Mr. Farley wouldn't have got hurt.

Q. I don't mean that, Mr. Johnson. I mean, to your recollection were there at least ten men going back?

A. Could have been more. Could have been less.

Q. Do you remember where you sat in this [25] launch on your way back?

(Deposition of S. L. Johnson.)

A. No, I don't remember.

Q. Do you remember if you talked to Mr. Farley at any time on the way back?

A. I don't remember that either. I don't remember talking to Mr. Farley at all.

Q. Is it your recollection that you didn't talk to Mr. Farley? Is that your memory or your recollection?

A. That's right.

Q. Did you observe Mr. Potts talking to Mr. Farley at any time?

A. No. Him and I was talking together.

Q. Was Mr. Farley by himself or did he have some friends with him, or do you remember?

A. I can't remember.

Q. On the way back from the dock to the Augustin Daly, you said you thought that would take about a half hour?

A. I would say something like that.

Q. Were you to go on duty on the ship when you got back?

A. No. The next morning.

Q. The next morning? A. Yes.

Q. Do you know if Mr. Potts was to go on duty at the same time you were or not?

A. I couldn't say.

Q. You don't remember? A. No.

Q. On the way back was it a fairly quiet voyage, or noisy or what, as far as you remember?

A. It was quiet.

Q. You don't remember any boisterous activity by crewmen going back on the launch?

(Deposition of S. L. Johnson.)

A. You mean unnecessary noise or something like that?

Q. Yes, singing or noise.

A. As far as I can remember, no. [26]

Q. Do you remember any arguments?

A. No.

Q. It was quiet as far as you can recall?

A. Yes.

Q. Do you recall where you were sitting on the launch itself? A. No, I can't say.

Q. You don't remember if you were forward near the bow or toward the stern?

A. I can't say. I was sitting somewhere on that Bumboat, but I don't know exactly forward or aft. I don't know where, but I was sitting. I don't know where I was sitting, 'midships or where.

Q. Were you sitting on a bench? A. Yes.

Q. Was Mr. Potts sitting next to you?

A. Not next to me. He was sitting there. He could have been standing up. I don't know.

Q. You don't recall where he was?

A. No.

Q. Do you recall where Mr. Farley was?

A. No, I don't.

Q. When the launch got back to the Augustin Daly, did it pull up alongside the Jacob's ladder that you have referred to? A. It did.

Q. Where would you say the launch pulled alongside of it? That is to say, was it even with the bow, or 'midships, or astern of the liberty launch?

(Deposition of S. L. Johnson.)

A. I'd say about 'midships; well, you couldn't say 'midships, because the bridge isn't 'midships, the bridge is 'midships, isn't it?

Q. I have never seen this vessel, Mr. Johnson.

A. Well, I'd say it was 'midships then.

Q. You would say the ladder was about amidship on the liberty launch? A. Yes.

Mr. Krause: Wait a minute. Are you talking about the ladder being amidships on the Augustin Daly or the liberty launch?

Mr. Williams: That it was amidships on the liberty launch.

Mr. Krause: Did you understand that?

The Witness: That is what I was answering.

Mr. Krause: He was asking whether the bridge was amidship on the liberty launch. You better just ask him that again to make sure.

Mr. Williams: We will go right through that, Mr. Johnson.

Q. As the liberty launch pulled alongside the Jacob's ladder, where was the Jacob's ladder with relationship to the liberty launch, the Bumboat?

A. I'd say it was 'midships.

Q. Was there any sort of a cabin or engine house or wheelhouse on this liberty launch?

A. It was a wheelhouse, yes. I don't recollect any cover was over it or not. There could have been or could not. I couldn't say.

Q. How much of a crew did this liberty launch have?

A. Well, they had the men that they brought

(Deposition of S. L. Johnson.)

back off the dock. I don't know how many men it was.

Q. You don't know how many men they used [28] to run the liberty launch? A. No.

Q. Were they Japanese?

A. Japanese, if I can remember.

Q. How did the launch hold itself alongside the Augustin Daly in unloading the men?

A. How did they what?

Q. How did they hold themselves alongside?

A. I am sure they tied the launch up there. I don't remember now how they did it, but I'm sure they tied it up.

Q. Do you recall just what happened as soon as the liberty launch stopped there? Did all the men get up? What happened to the best of your recollection? A. I don't remember.

Q. Did the men in general get up and start moving forward toward the Jacob's ladder?

A. I couldn't say.

Q. You don't remember? Were you standing in line, or anything like that to go aboard this——

A. No.

Q. You were just standing there?

A. Just standing there waiting to go up, that's all.

Q. You were waiting your turn? A. Yes.

Q. Do you think you were as much as ten feet away from the ladder? A. Yes.

Q. Had you gotten up from your bench?

A. Yes, I had stood up.

(Deposition of S. L. Johnson.)

Q. Do you know if you had walked any distance yet? A. No.

Q. You don't know where on the liberty launch [29] Mr. Farley was at the time?

A. No, I couldn't say where he was standing but I'm sure he was in front of me.

Q. Do you think he was a little closer to the——

A. The ladder than I was?

Q. Yes. A. I'm sure he was.

Q. Was anybody standing right around him?

A. I don't remember.

Q. It is your recollection that someone yelled when Mr. Potts was falling, just prior to his landing down there, is that right?

A. Yes. Someone yelled. I don't know who it was. Someone did holler that someone has fallen.

Q. Do you know if it was somebody in the liberty launch or somebody up on the vessel?

A. If I remember, it was someone in the launch was saying—yelling that someone was falling.

Q. You didn't see him fall, though?

A. When the man fell, I didn't actually see him.

Q. You didn't see him in the air?

A. No, but when I saw him they was both lying down. It happened so quick. Somebody said the man was falling and then it happened just like that.

Q. When the launch pulled alongside the Augustin Daly was there anyone from the crew on the ship up topside that you remember?

A. I can't remember that.

(Deposition of S. L. Johnson.)

Q. Did you watch Mr. Potts going up the ladder, or did you not pay any particular attention to him? [30]

A. No, I didn't. I didn't pay any attention.

Q. And when he fell, did you go over to see if he and Mr. Farley were all right?

A. Yes, I did. I went over to the both of them.

Q. Did Mr. Potts say anything to you then?

A. If I can remember right, he said, "I'm not hurt too bad," or something, but Mr. Farley was giving awful groans and someone was trying to take care of him. I went over to try to give a hand.

Q. Did you see any other men get struck by the body of Mr. Potts besides Mr. Farley? A. No.

Q. Do you know whether or not there were?

A. Not to my recollection.

Q. Did you see any of these packages that you had reference to? Did they come down when Mr. Potts fell?

A. I'm sure they did, if he was carrying them.

Q. What I mean is, did you see any fall on the liberty launch?

A. I can't remember, sir. I don't know exactly. They must have fell. I can't remember seeing any, though.

Q. I am going to ask you if you remember a bottle breaking on the deck of the liberty launch?

A. As far as I can remember, no.

Q. You don't remember?

A. Not any bottles breaking, no.

Q. Do you know if Mr. Potts picked up any

(Deposition of S. L. Johnson.)

[31] packages after he fell and went up the ladder with them?

A. I don't remember that either.

Q. Was this launch arriving back at the Augustin Daly at the regular time, or was this the regular return time for the launch to the vessel?

A. Well, those launches didn't have no certain time to go back to the ship. They go any time.

Q. Well, didn't you have a set time when the launch would——

A. Leave the dock?

Q. I was going to say first, leave the vessel, takes you ashore, and leave the dock and takes you back. Was there a schedule worked out for that?

A. Don't put this down. I'm not sure if it was the right time for the ship launch to come back or not. All I knew, it came back on time. I don't know whether it was the schedule or wasn't. I don't know now. It could have been.

Q. You said you thought somebody went up the ladder before Potts. Do you know who it was?

A. No, I don't. I really don't know who it was.

Q. Mr. Johnson, have you been contacted by representatives of the respondent in this case? That is, the United States of America, before you came here to have your deposition taken?

A. Yes, sir.

Q. You talked to them at times about this accident and how it happened?

A. I have talked to two gentlemen. I don't know who they were. I talked to this gentleman here. [32]

(Deposition of S. L. Johnson.)

Mr. Krause: Pointing to Mr. Krause.

The Witness: Mr. Krause, there. And I talked to—I talked to three gentlemen. I talked to a gentleman in Pier 35 in April, I think it was.

Q. (By Mr. Williams): Of what year? Of this year?

A. Yes, this year. If I'm not mistaken, I think it was. I talked to a gentleman in Los Angeles the last time I was down there.

Q. You say Pier 35. You mean here in San Francisco?

A. Yes. I talked to a gentleman in Los Angeles. I have his card in my wallet.

Q. And that has all been in this year?

A. Yes.

Q. Did these gentlemen tell you who they were representing?

A. They were speaking of this same case, here.

Q. Were they representing, you might say, the ship, or the United States of America or were they representing Mr. Farley, or do you know?

A. I can't remember.

Q. You don't remember? A. No.

Q. Have you ever met me or talked to me before this deposition? I am not one of the persons you have reference to, am I?

A. I don't know. Have you ever talked to me?

Q. Mr. Johnson, I can't testify. I might tell you privately that we haven't, but you don't recall?

A. No, I don't remember seeing you before.

Q. Did you make a report to your officers after

(Deposition of S. L. Johnson.)

this accident had occurred on board ship, or did they ask you for a report? A. No.

Q. No one asked you for a report? A. No.

Q. Did they ask you to have a written statement or anything as to your recollection of what occurred? A. No.

Q. When is the first time that you were contacted about this accident after it happened and before now? Has it all been in this year, 1955?

A. This year.

Q. Did you go any place else while you were ashore, Mr. Johnson, in Sasebo, that you recall, other than to just to a bar and have some drinks and to buy some souvenirs? A. No.

Q. That is all you did? A. Yes.

Q. You didn't go to any other business establishment for any other purpose that you can recall?

A. No.

Q. Did you have a haircut? A. No.

Q. You had been to sea then for about 30 days, hadn't you?

A. That's right, something like that.

Q. Did you go to more than one bar or did you just go to one? A. Just one.

Q. Where was that one located in Sasebo?

A. I don't know.

Q. Was it right near the dock?

A. It wasn't near the dock. It was somewhere up in town. [34]

Mr. Williams: I have no further questions.

Mr. Krause: I have nothing further.

(Deposition of S. L. Johnson.)

Mr. Johnson, you will be entitled to see this deposition and to sign it if you wanted to check it over, what the reporter has gotten, but you can also waive that signature if you want to, and I think that the reporter heard everything all right that you said and he is a good reporter, so undoubtedly he has written it down just as you said, so do you want to waive your signature?

The Witness: I would like to read it over myself first.

Mr. Krause: That is going to be a little bit complicated.

The Witness: I can't read shorthand at all.

Q. (By Mr. Krause): You are going to sea on the Lurline. What day do you leave here?

A. We leave here Monday afternoon at four o'clock.

Q. That is tomorrow afternoon. Do you have to be aboard ship tomorrow?

A. I have to be at fire and boat drill tomorrow morning at 9:30. The only way I can get off is get excused and it would have to be a good reason.

Q. After 9:30 can you get excused and get away from the ship again?

A. Well, fire and boat drill lasts about eleven o'clock and I have to be at work at twelve-thirty.

Q. You will be operating an elevator on the Lurline?

A. From then until 5:00 o'clock. [35]

Q. Do you expect to be anywhere around Portland during the next week?

(Deposition of S. L. Johnson.)

A. No, sir. We never go to Portland. When we leave here, we go to Honolulu and from there to Los Angeles and back to Honolulu and then 'Frisco.

Q. You are sailing between California and Hawaii? A. That's right.

Q. You expect to remain on that ship, in the next month? A. Yes.

Mr. Krause: Off the record.

(Off the record discussion by direction of respective counsel.)

Q. (By Mr. Krause): Mr. Johnson, are you willing to waive the reading and signing of your deposition?

The Witness: Yes. [36]

[Endorsed]: Filed July 25, 1955.

[Endorsed]: No. 15221. United States Court of Appeals for the Ninth Circuit. John Farley, Appellant, vs. United States of America, Appellee. United States of America, Appellant, vs. John Farley, Appellee. Transcript of Record. Appeals from the United States District Court for the District of Oregon.

Filed: July 26, 1956.

Docketed: August 3, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15221

JOHN FARLEY,

Appellant and Cross-Respondent,

vs.

UNITED STATES OF AMERICA,

Appellee and Cross-Appellant.

APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORD

John Farley, appellant above-named, hereby:

(1) Adopts in full as his Statement of Points on Appeal libellant-appellant's Assignment of Errors previously filed herein for consideration by the above entitled Court upon this appeal; and

* * * * *

/s/ DAVID R. WILLIAMS

Of Proctors for Appellant
WILLIAMS & ALLEY

Acknowledgment of Service Attached.

[Endorsed]: Filed Aug. 3, 1956. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

APPELLEE'S AND CROSS-APPELLANT'S
STATEMENT OF POINTS

Appellee and cross-appellant, United States of
America, hereby: * * * * *

(2) Submits the following Statement of Points upon which it intends to rely:

1. The District Court erred in overruling appellee's exceptions to the libel.

2. The District Court erred in holding (a) that the libel stated facts sufficient to constitute a cause of suit against appellee, (b) that it had jurisdiction to hear and determine this suit, or (c) that it had jurisdiction over the person of appellee.

3. The District Court erred in holding that the sole proximate cause of appellant's injuries was the negligence of appellee's servant Potts.

4. The District Court erred in finding that at the time of the accident appellee's employee Potts was acting within the scope of and in the course of his employment.

5. The District Court erred in holding that no acts or failure to act on the part of libelant proximately caused or contributed to his injuries.

6. The District Court erred in failing to find that appellant was negligent (a) in disregarding his duty to warn Potts of the danger of climbing the ladder with his hands encumbered, (b) in failing to keep a lookout for his own safety, and (c) in standing at the foot of the ladder while Potts was ascending with hands encumbered.

7. The District Court erred in awarding a decree against appellee for maintenance, cure and medical treatment.

8. The District Court erred in entering a decree awarding general and special damages to libelant in any amount.

C. E. LUCKEY,
United States Attorney for Oregon,
Proctor for appellee and cross-
appellant, United States of
America

/s/ GUNTHER F. KRAUSE,
Of counsel for proctor for appellee
and cross-appellant, United States
of America

Affidavit of Service by Mail attached.

[Endorsed]: Filed Aug. 4, 1956. Paul P. O'Brien,
Clerk.